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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 366.

FREDERICK A. PECKHAM, APPELLANT,

vs.

WILLIAM HENKEL, UNITED STATES MARSHAL FOR THE SOUTHERN DISTRICT OF NEW YORK, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED FEBRUARY 20, 1909.

(21,523.)

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1 The President of the United States of America to William Henkel, United States Marshal for the Southern District of New York, and to any person having custody of Frederick A. Peckham, under the authority of said United States Marshal, Greeting:

We command you that you have the body of Frederick A. Peckham, by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention by whatsoever name the said Frederick A. Peckham is called or charged before the Circuit Court of the United States for the Southern District of New York held in the Post Office Building in the City of New York, County of New York, State of New York, on December 4, 1908, at 11 o'clock in the forenoon, to do and receive what shall then and there be considered concerning said Frederick A. Peckham, and have you then and there this Writ.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States of America, the 2nd day of December, 1908.

[SEAL.] GEO. C. HOLT, *J.*

JOHN A. SHIELDS, *Clerk.*

The foregoing Writ is hereby allowed.
Dated December 2, 1908. GEO. C. HOLT, *J.*

NASH ROCKWOOD,
378 *Broadway, Saratoga Springs, N. Y.*,
MAX D. STEUER,
115 *Broadway, New York City,*
Attorneys for Petitioner, Frederick A. Peckham.

2 (Endorsed:) United States Circuit Court, Southern District of New York.—Frederick A. Peckham, Petitioner, vs. William Henkel, United States Marshal in and for the Southern District of New York, and John A. Shields United States Commissioner for the Southern District of New York, Respondents.—Writ of habeas corpus.—Nash Rockwood, 378 Broadway, Saratoga Springs, N. Y., and Max D. Steuer, 115 Broadway, New York City, Attorneys for Petitioner.—Bail fixed at $2500. Geo. C. Holt.—Prisoner kept in custody of his counsel till Friday, December 4, 1908. G. C. H.

3 In the Circuit Court of the United States for the Southern District of New York.

In the Matter of the Petition of FREDERICK A. PECKHAM for Writs of Habeas Corpus and Certiorari.

FREDERICK A. PECKHAM, Petitioner,
vs.
WILLIAM HENKLE, United States Commissioner in and for the Southern District of New York, and John A. Shields, United States Commissioner for the Southern District of New York, Respondents.

To the Circuit Court of the United States for the Southern District of New York:

The Petition and Complaint of Frederick A. Peckham respectfully shows to the Court:

1. That Frederick A. Peckham, the person in whose behalf writs of habeas corpus and certiorari are hereby applied for, is a citizen of the United States, and a citizen and resident of Chicago in the State of Illinois, U. S. A.

2. That your petitioner is imprisoned and restrained of his liberty in the custody of William Henkle, United States Marshal in and for the Southern District of New York, and is now unlawfully and in violation of his rights under the constitution and statutes of the United States of America, detained in the custody of said Marshal in the City of New York, County and State of New York.

4 3. That your petitioner is so held and unlawfully restrained of his liberty by said Marshal without color and claim of authority of the United States by virtue of alleged orders of commitment or warrants issued by John A. Shields, Esq., United States Commissioner in and for the Southern District of New York, upon complaints purporting to charge your petitioner with violation of the laws of the United States. True copies of said commitments of warrants issued by said United States Commissioner are hereto attached and made a part hereof, and marked Exhibits "1" and "2," and hereby referred to the same as if herein written at length.

That your petitioner has been so committed and is detained only under and by virtue of said warrants or orders of commitment, and not by virtue of any judgment, decree, final order, process or mandate issued by a court or a Judge of the United States of America in a case where such courts or Judges have exclusive jurisdiction under the laws of the United States, or have acquired exclusive jurisdiction by the commencement of legal proceedings in such court, or by virtue of a final judgment or decree by a competent tribunal of civil or criminal jurisdiction, or of the final order of such tribunal made in a special proceeding instituted in any cause, either a contempt proceeding or otherwise, or by virtue of an execution or other process issued upon such a judgment, decree or final order.

4. That the cause or pretence of such imprisonment and restraint of your petitioner, according to the best knowledge and belief of your petitioner is as follows, to wit:

5 Your petitioner was heretofore and on the 30th day of November, 1908, apprehended by the said William Henkle, United States Marshal, and taken before John A. Shields, Esq., said United States Commissioner, having an office at the Post Office Building in the City, County and State of New York, and was then and there informed that two indictments had been found against your petitioner by the grand jury of the Supreme Court of the District of Columbia in and by which indictments your petitioner was charged with having committed the following criminal acts:

Indictment No. 26086.

An indictment found May 29th, 1908, in the District of Columbia charging your petitioner and Edwin S. Holmes, junior, and Moses Haas with having conspired on the thirty-first day of May, 1905, at the said District of Columbia with one Lewis C. Van Riper, to defraud the said United States of and concerning its governmental

function in the matter of issuing and publishing the cotton-crop report to be issued and published by said department and bureau in the then next succeeding month of June, and of its right to administer an intelligent and honest service in that behalf in the interests of the people of the United States, to be accomplished by certain means and methods and under the circumstances and conditions set forth and described in said indictment.

6 *Indictment No. 26087.*

Indictment found on May 29th, 1908, in the District of Columbia, charging that on May thirty-first, nineteen hundred and five, at the District of Columbia, your petitioner and Moses Haas conspired with Lewis C. Van Riper to commit an offense against the United States, that is to say, the offense of promising, offering and giving to an officer of the United States, and a person acting for and on behalf of the United States, in an official function under and by virtue of a certain office and department of the government thereof, that is to say, to the said Edwin S. Holmes, junior, Associate Statistician of the said Bureau of Statistics, as aforesaid, a sum of money to induce him, the said Edwin S. Holmes, junior, to do certain acts in violation of his lawful duty, that is to say, to induce him, the said Edwin S. Holmes, junior, unlawfully and in violation of his said duty as such Associate Statistician honestly and carefully to keep secret all statistics and statistical matter and information, knowledge of which was acquired by him as aforesaid as such Associate Statistician, and in advance of the official issue and publication of the said cotton-crop report which was to be issued in the month of June next ensuing, in advance of the time when the matter and information contained in said cotton-crop report could lawfully be made public, to furnish in so far as in him the power lay, to your petitioner and the said Moses Haas and the said Lewis C.

7 Van Riper, the statistics, matter and information which were to be contained in said report, of which knowledge was as aforesaid acquired by said Edwin S. Holmes, junior, in the performance of his duty as such associate statistician.

In substance said two indictments so found in the District of Columbia as aforesaid charge your petitioner with having conspired to violate the provisions of Section 5440, as amended, and Section 5451 of the Revised Statutes of the United States of America.

5. That thereupon, when your petitioner was so brought before said Commissioner Shields, he appeared in person, with Nash Rockwood and Max D. Steuer, his counsel, the United States being represented by Goldthwaite H. Dorr, Esq., Assistant United States Attorney.

6. That your petitioner thereupon applied for an examination into the causes of his restraint in pursuance of the rights and privileges accorded to him by Section 1014 of the Revised Statutes of the United States, and thereupon the United States Attorney in and for the Southern District of New York, for and on behalf of the said United States, did there introduce in evidence to and before the

said Commissioner in support of the averments of the complaints of said Goldthwaite H. Dorr, certain papers purporting to be certified copies of the said alleged indictments mentioned and referred to in said complaints, together with the bench warrants alleged to have been issued thereon from the District of Columbia, and the identity of your petitioner being admitted, the said United States
8 rested its case without offering the testimony of any witnesses.

I annex hereto, as hereinafter stated, a copy of the stenographer's minutes of said hearing before said Commissioner Shields, showing in detail the objections taken in my behalf to said proceedings and each and every part thereof. Such proceedings were thereupon adjourned by the said Commissioner, to December 1, 1908, at which time said Commissioner rendered his decision in substance overruling my objections, and has issued the warrants or indictments aforesaid, and has placed me in the custody and under the control of said United States Marshal, and has thereby restrained me of my liberty as hereinbefore and hereinafter set forth.

7. I claim that said proceedings are wholly illegal for the following reasons, among others:

First. Said two indictments found against me in the District of Columbia, to wit, indictments Nos. 26086 and 28087, do not charge me with having conspired to commit, or with having committed any crime or offense against the United States, or any crime or offense cognizable or punishable under or by virtue of the laws of the United States.

Second. The alleged crimes attempted to be set forth in said two indictments so found in the District of Columbia are barred by the Statute of Limitations, as shown by the record evidence introduced and admitted in evidence before the said United States Commissioner Shields hereinbefore set forth.

9 *Third.* The said two indictments do not charge me with the commission of any crime or offense, and there was therefore an entire absence of probable cause, and said Commissioner was without jurisdiction to commit or detain me, or to issue said warrants or commitments to said Marshal for my apprehension and detention as aforesaid.

Fourth. Said indictments wherein they attempt to set forth and aver a crime against me by alleging the violation of a rule or regulation of the Secretary of Agriculture do not aver a statutory offense, and therefore fail to charge me with the commission of any crime in that respect.

Fifth. Said indictments, wherein they attempt to aver and state that Edwin S. Holmes, junior, was at any time an officer of the United States within the meaning of that term, state what is not so—either in law or as a matter of fact—and I contend that said Holmes was not an officer of said United States at any time.

Sixth. That portion of said indictments which attempts to allege a violation of Section 5451 of the Revised Statutes, does not sufficiently or properly charge any violation of that Section.

Seventh. If the crime of conspiracy to bribe had in fact been entered into, as in said indictments set forth, said crime merged in the completed or substantive offense.

8. Indictments having been found against me in the Southern District of New York charging me with having committed
10 precisely the same offenses charged in the two indictments introduced in evidence by the Government before the Commissioner, as aforesaid, and a bench warrant for my arrest having been previously issued upon said indictments so found in the New York jurisdiction, and I being actually enlarged on bail at the time of my arrest in said removal proceedings, it follows that there are two sets of indictments in existence—one set of two indictments in the District of Columbia, and one set of two indictments in the Southern District of New York—each charging me with having previously committed the same offense, and I claim in this respect that a crime can be but once committed and completed, and that it was impossible for me, either as a matter of fact or of law, to have committed and *completed* the same crime in two jurisdictions at the same time, for which reason, coupled with the fact of my being actually in custody under and by virtue of the warrant of arrest issued upon the said New York indictments, I claim that there was no probable cause to warrant an order committing me to the custody of the Marshal for removal for trial to the District of Columbia for alleged crimes upon which I had been previously indicted and arrested in the Southern District of New York, and for which I was actually in custody at the time of my arrest in these removal proceedings.

9. I contend that the said two indictments are defective in substance, as the same overt acts cannot be connected with the commission of different crimes.

11 10. The proceedings before Commissioner Shields did not confer jurisdiction upon him to commit your petitioner for removal for the following additional reasons:

(*a*) The said complaint upon which the warrants were issued for the apprehension of your petitioner are upon information and belief and not upon the positive knowledge of the affiant.

(*b*) Previous complaints for the same offenses had been made against me to said Commissioner Shields on or before the 24th day of June, 1908, by the said Dorr, upon information and belief, averring in substance the finding of the said two indictments, as aforesaid, against me in the District of Columbia, and I had been previously and on or about the 24th day of June, 1908, arrested upon a bench warrant issued by the said Commissioner Shields upon the aforesaid complaints, and had been admitted to bail and was actually enlarged on bail up to the time of the institution of these removal proceedings. There was no bench warrant from the District of Columbia attached to said previous complaints against me, and previous to the institution of these proceedings the said United States withdrew its complaints before said Commissioner Shields against my objection, and while I was actually enlarged on bail by virtue thereof, and instituted these proceedings.

11. At the time of my apprehension in these proceedings
12 before said Commissioner Shields, I was actually enlarged on bail by an order of Honorable George W. Ray, United States Judge for the Northern District of New York, in removal proceed-

ings pending against me upon an indictment for practically the same offense charged in indictments 26086 and 26087 found against me in the District of Columbia in the year nineteen hundred and five, the details of which proceeding are hereinafter set forth, and I contend in this respect that as I was actually in the custody of my surety at the time of my apprehension in this proceeding, and inasmuch as an order for my removal to the District of Columbia was outstanding that said Commissioner was without jurisdiction to grant a commitment for my removal upon these two indictments to the said District of Columbia.

12. That I have been advised by my counsel, Nash Rockwood and Max D. Steuer, and verily believe that said two indictments found against me in the District of Columbia do not charge me with the commission of any offense whatever against the United States of America prohibited either by the common law, or any law or statute of the said United States of America, and that there was an entire absence of proof of probable cause of said alleged crimes before said Commissioner to warrant him in holding me to answer for the same, or to detain and restrain me of my liberty as aforesaid.

13. That the detention of your petitioner is without authority of law, and he is restrained in his liberty in violation of the Constitution of the United States, and any further proceedings in
13 pursuance thereof, or the further detention or imprisonment of your petitioner would be unlawful. That said United States Commissioner had no jurisdiction to commit your petitioner to the custody of said United States Marshal for the reason that said pretended indictments were and are illegal as aforesaid, and there was no probable cause for believing or finding your petitioner guilty of any offense whatsoever.

14. That said Commissioner did not have before him in so committing your petitioner any probable cause to believe that your petitioner had committed the crimes sought to be charged against him, or any other crimes against the United States. That said Commissioner had no jurisdiction or authority to order the arrest or commitment of your petitioner, and all of the alleged process under color of which your petitioner is restrained of his liberty is unauthorized, illegal and void.

15. That heretofore, and on the 22nd day of August, 1905, indictments known as No. 24866 and 24877 were returned to the Supreme Court of the District of Columbia against Edwin S. Holmes, junior, Moses Haas and your petitioner, charging an alleged violation of Section 5440 of the Revised Statutes of the United States, as amended.

16. That on October 2nd, 1905, indictment known as No. 24907 was returned to the Supreme Court of the District of Columbia against Edwin S. Holmes, junior, your petitioner and Moses Haas, in substance charging a violation of section 5440 of the Revised Statutes of the United States.

14 17. That said three indictments so found contain averments, in substance, as I claim, stating practically the same alleged conspiracy set forth in the two subsequent indictments found in the District of Columbia in the year 1905, as hereinafter set forth,

for the reason that said indictments of 1905 aver a conspiracy in reference to the June, 1905, crop report, that being the same crop report stated in the subsequent New York and Washington indictments to have been the object of these conspiracies. For these reasons I claim that said alleged criminal acts averred in the New York and District of Columbia indictments of the year 1908 are barred by the Statute of Limitations.

18. Heretofore and on or about the 23rd day of August, 1905, complaint based upon an indictment found in the District of Columbia on August 22nd, 1905, was presented to Charles M. Davison, Esq., United States Commissioner for the Northern District of New York, who thereupon issued a warrant for my arrest, and I was apprehended and taken before said Commissioner for a hearing. Such proceedings were had therein that I gave bail for my appearance at Washington, and thereafter was surrendered by my bondsmen and again committed to the custody of the Marshal. On or about October 2nd, 1905, I applied to Honorable George W. Ray, United States Judge, for the Northern District of New York, for a writ of habeas corpus in said proceeding, which was granted, and I was taken before United States Judge Ray, and an argument had on the merits of my application, at which time the United States Attorney
15 for the Northern District of New York also made application to said District Judge for a warrant of removal to remove me to the District of Columbia for trial. Said order of removal was granted by said District Judge, and I thereupon petitioned to be allowed to appeal therefrom, which petition was granted, and I duly caused appeal to be perfected and the same is now pending undetermined in the United States Circuit Court of Appeals for the Second Circuit, and argument thereon is appointed to be held on December 10th, 1908. Upon said order of removal from which I have taken said appeal, Judge Ray made the following endorsement:

"The defendant having taken an appeal from the within order of "removal, and said appeal having been allowed, ordered that the "execution of this order be stayed until the dismissal or determina"tion of such appeal.

"GEORGE W. RAY,
"*U. S. Judge.*"

At the time of taking said appeal, I gave the usual undertaking on appeal with the American Bonding Company of Baltimore, surety, and I also gave a supersedeas bond, with the same surety, for the sum of Twelve thousand dollars ($12,000.00) upon the filing of which said District Judge ordered my release from custody, and I am now and have been at all times since said 10th day of January, 1906, enlarged on said bail, pending the determination and argument of said appeal. I claim for this reason that being now actually in the custody of my surety, and in order for my removal to
the District of Columbia upon the previous indictment being
16 outstanding, that another order for my removal is unwarranted and that the Commissioner had no jurisdiction to order my commitment for removal.

19. Heretofore, and in or about the Fall of 1905, I was again

arrested by virtue of a warrant issued upon a complaint based upon said 1905 indictment found in the District of Columbia made to James Ridgeway, United States Commissioner, and I was arraigned before said Commissioner for a hearing, which hearing was duly had and resulted in my discharge by said Commissioner Ridgeway, his decision being to the effect that said indictment failed to charge me with the commission of a statutory offense for which I was legally accountable.

20. Thereafter, and on or about the 5th day of January, 1906, a complaint was laid before the Honorable George C. Holt, United States Judge, by Henry L. Burnett, Esq., United States Attorney for the Southern District of New York, based upon said indictment known as No. 24907 found in the District of Columbia, and also based upon a bench warrant issued out of the Supreme Court of the District of Columbia for the arrest of Moses Haas, one of the defendants who is jointly charged with me with having conspired, as alleged in the indictments. Said Haas was thereupon apprehended and brought before said United States Judge Holt, where a hearing was had and said Haas subsequently discharged, said United States Judge Holt expressly finding that said indictment did not charge the defendants with having committed an offense against the laws of the United States, or any other offense for which removal
17 could be had to the District of Columbia. It appears, therefore, that I have already been discharged by Commissioner Ridgeway upon the 1905 Washington indictment, and that my codefendant, Moses Haas, has been further discharged by United States Judge Holt upon indictments which we claim in substance charge us with practically the same conspiracy set forth in the subsequent New York indictments and the subsequent Washington indictments.

21. Thereafter the trial of Edwin S. Holmes, junior, upon said 1905 indictment found in the District of Columbia occurred in the District of Columbia and the jury disagreed and were discharged. Upon such trial, one, Lewis C. Van Riper was called by the government and testified as a witness, his evidence being to the effect, as I believe, that the alleged conspiracy related to certain cotton-crop reports, among them being the June cotton-crop report of the year 1905, which latter is the same crop report alleged in the subsequent New York and Washington indictments to have been the object of the conspiracy.

22. On the same day that said indictments were found against me in the District of Columbia two indictments were found against me for the same offense in the Southern District of New York, said New York indictments averring that on the 29th day of May, 1905, I conspired in the Southern District of New York to commit the same crimes with which I am charged in the two Washington indictments; in other words, the two Washington indictments and the two
18 New York indictments each charge completed crimes to have been committed within their respective jurisdictions on the same dates, which I contend is not only a physical, but likewise a legal impossibility.

23. After the finding of said indictments against me in the New

York jurisdiction in May 1908, upon which a warrant, as I am informed and verily believe, was issued out of the United States Circuit Court for my apprehension and by virtue of the said indictments found in the New York jurisdiction. I was thereupon apprehended and arraigned before Judge Chatfield, and subsequently admitted to bail and discharged from the custody of the Marshal upon the approval of the same.

24. Subsequently I interposed two demurrers to said indictments which were argued before United States Judge Hough, who thereafter overruled the same.

25. I am further advised by my said counsel, and verily believe that under and by virtue of Clause 3, section 2 of Article 3 of the Constitution of the United States of America, and of the Sixth Amendment to the Constitution, that I am entitled to be tried and can only be indicted and tried for any alleged offense against the laws of the United States in the State and District in which the offense, or offenses, which the indictment or indictments charged were committed. That the United States having procured indictments against me in the Southern District of New York charging me with having committed and completed the same crimes in the Southern District of New York with which I am charged in the two indictments
19 found in the District of Columbia to have been committed on the same day, to wit, May 29th, 1905, and having by virtue of said indictments caused my arrest previous to the institution of any removal proceedings, and the Court having overruled my demurrers to said New York indictments and found that the same alleged a crime, I contend that the Government should be required to try me, if at all, for said alleged crime in the Southern District of New York. I further contend that I could not legally commit and complete the same crime in two different districts on the same day, and that even if removed to the District of Columbia under and by virtue of said removal proceedings, I could not be there legally tried for an offense, or offenses, committed in the Southern District of New York.

26. Your petitioner further says that he is advised that under and by virtue of the said article of the Constitution of the United States, and by virtue of the Fifth Amendment to the Constitution of the United States, he is privileged from arrest and detention and that he cannot be deprived of his liberty under the processes on the faith of which he is detained save and except upon a charge that he has violated a law of the United States and save and except thereof evidence before the officer issuing the said process sufficient to establish that there is probable cause to believe him guilty of the said charge, and that in the said indictments, which with the bench warrants, were practically the sole testimony offered by the Government
20 before said Commissioner in said proceeding there is no proof to sustain a charge that your petitioner has violated any of the laws of the United States in the District of Columbia, nor is there any evidence to establish that there is probable cause to believe him guilty of any crime or offense against the United States.

I annex hereto and make a part of this my petition, the same as if herein written at length, copies of the following papers, which said copies disclose in detail the facts herein alleged:

Exhibit 1. Commitment issued by Commissioner Shields under which I am now detained.

" 2. Similar commitment issued by United States Commissioner Shields, under which I am also now detained.

" 3. Previous removal complaint verified by Goldthwaite H. Dorr June 24, 1908.

" 4. ——— ———.

" 5. Undertaking given by me on the first day of June, 1908.

" 5a. Warrant signed by John A. Shields, U. S. Commissioner in the proceeding in which I am now held, dated November 30, 1908, together with removal complaint by Goldthwaite H. Dorr, verified November 30, 1908, and Exhibit thereto attached.

" 6. Indictment No. 26086, being the indictment found in Washington on May 29, 1908.

" 7. Indictment No. 26087, being second indictment found against me in Washington on May 29th, 1908.

" 8. Bench warrant upon indictment 26086 bearing date May 29th, 1908.

" 9. Bench warrant issued upon indictment 26087.

21

Exhibit 10. Indictment No. 24866, being the first Washington indictment found August 2, 1905.

" 11. Second Washington indictment No. 24867 found August 22nd, 1905.

" 12. Third Washington Indictment being No. 24907, found October 2nd, 1905.

" 13. Opinion of United States Commissioner Ridgeway discharging me upon said 1905 indictment and holding that the said indictment does not aver a crime.

" 14. Extracts from stenographer's minutes of the trial of the United States against Edwin S. Holmes, junior, being the testimony there given by Lewis C. Van Riper.

" 15. First New York indictment found against me May 29th, 1908.

" 16. Second New York indictment found against me May 29th, 1908.

" 17. ——— ———.

" 18. Demurrer interposed by me to first New York Indictment.

" 19. Demurrer interposed by me to second New York indictment.

" 20. Opinion of Judge Hough overruling demurrers.

" 21. Order of Judge Hough overruling demurrers.

" 22. The record in the United States Circuit Court constituting the record of the proceedings in the District Court of the Northern District of New York in which proceedings a removal complaint was issued against me, and on appeal from said order I am enlarged on bail.

" 23. Stenographer's minutes of present proceeding before Commissioner Shields.

22 Wherefore, Your petitioner prays that a writ of habeas corpus issue directed to William Henkle, Marshal of the United States for the Southern District of New York, or to any person having your petitioner in custody under the authority of said Marshal, commanding them to produce the body of your petitioner before this Court forthwith, together with the cause of such imprisonment and detention, and further that a writ of certiorari issue directed to John A. Shields, United States Commissioner in and for the Southern District of New York, in aid of the writ of habeas corpus aforesaid, requiring said John A. Shields to return and certify to this Court forthwith the cause of the imprisonment of your petitioner and true copies of all the proceedings, complaints, warrants, depositions, examinations, detentions, commitments, documentary evidence and record had before him for such action as may be proper in the premises, and that your petitioner be admitted to bail pending the hearing and determination of said matter.

Dated, at the City of New York, this 1st day of December, 1908.

FREDERICK A. PECKHAM,
Petitioner.

NASH ROCKWOOD,
378 *Broadway, Saratoga Springs, N. Y.,*
MAX D. STEUER,
115 *Broadway, New York City,*
Attorneys for Petitioner.

23 STATE OF NEW YORK,
City and County of New York, ss:

Frederick A. Peckham, being duly sworn, says: That he has read the foregoing petition and knows the contents thereof, and that he believes it to be true.

FREDERICK A. PECKHAM.

Subscribed and sworn to before me this 1st day of December, 1908.

JOHN A. SHIELDS,
U. S. Commissioner.

24 Annexed to the foregoing Petition and forming part thereof are Exhibits numbered 1, 2, 3, 5, 5-*a*, 6, 7, 8, 9, 10, 11, 12, 13, 15, 16, 18, 19, 20, 21, 22, 23, therein mentioned all of which are contained in the removal proceedings before Commissioner Shields and appear *in extenso* in his return to the writ of certiorari granted on the prayer of the above petitioner.

Exhibit 14 which is referred to in said petition and annexed thereto is as follows:

25 In the Supreme Court of the District of Columbia.

THE UNITED STATES
vs.
EDWIN S. HOLMES, JR.

Stenographer's Minutes, Book 8, Pages 839 to 946.

26 LEWIS C. VAN RIPER, a witness of the lawful age, called by and on behalf of the United States, having been first duly sworn, testified as follows:

By Mr. BEACH:

Q. Will you state your full name?
A. Lewis C. Van Riper.
Q. And where do you live at present?
A. New York City.
Q. What is your occupation, Mr. Van Riper?
A. Operator in mines.
Q. Where?
A. In Goldfield, Nevada.
Q. Where were you living, Mr. Van Riper, and what were you doing in the years 1904-1905?
A. Living in New York, running the New York Mailing and Advertising agency at 108 Fulton Street.
Q. New York City, I presume?
A. Yes, sir.
Q. How long had you lived in New York City in 1904?
A. Since 1897.
Q. Are you acquainted with Frederick A. Peckam?
A. Yes sir.
Q. And with E. S. Holmes, Jr.?
A. Yes sir.
Q. And with one Moses Haas?
A. Yes, sir.
Q. Which one of them did you know first?
A. Mr. Holmes.
Q. You knew Mr. Holmes first?
A. Yes, sir.
Q. And whom did you next meet?
A. I met Mr. Haas after Mr. Holmes.
Q. When did you first see Mr. Holmes?
A. On the 7th of August, 1904.
Q. And how?
A. I was introduced to him by Mr. F. A. Peckham.
Q. Where?
A. At the Raleigh Hotel, Washington.
Q. When did you first know Mr. Peckam?
A. I met him about a year prior to that, in New York.
Q. What was the occasion of your coming to Washington?
A. Mr. Peckam asked me to come here.
Q. And how did he ask you to come: in what form?
A. He sent me a telegram on August 6th.

(A telegram was handed to the witness.)

Mr. BEACH (after a whispered conference with the counsel for the defendant): If your Honor please I was saying to Mr. Worthington that my recollection is that the representative of the Company has already testified that the original telegrams in the possession of his Company have been destroyed. If I am not clear about it, I would like to be corrected. I think that is the testimony.

Mr. BAKER: Yes, that is it.

Mr. WORTHINGTON: That is my recollection.

Mr. BEACH: It should have been if it was not.

Mr. WORTHINGTON: I suppose it was not the original that he delivered to this gentlemen.

By Mr. BEACH:

Q. Where did you receive that telegram, Exhibit No. 1?

A. 108 Fulton Street.

(Counsel for the defendant requested that the answer of the witness be repeated in a louder tone.)

Q. Where did you receive it, Mr. Van Riper?

A. Well I don't remember exactly where I received it.

Q. Did you receive it here, or in New York?

A. I received it in New York.

Mr. BEACH: If your Honor please, this is laid as the first overt act. I will read it to the jury. "Postal Telegraph. Commercial Cable." Dated: "Washington D. C., August 5." I think it is—"5" or "6."

Mr. ADKINS: "August 6."

Mr. BEACH: The "6" is a little indistinct. (Exhibiting telegram to counsel for the defendant.)

Mr. WORTHINGTON: Oh, that is "6."

Mr. BEACH: I think so, yes. (Reading) "L. C. Van Riper room 1001, No. 20 Broad Street, New York. Come to Washington at once. Wire me Raleigh Hotel time of arrival. Don't advise Mrs. P. Fred. 1:19 P. M.

By Mr. BEACH:

Q. What was the occasion of his sending that telegram, if you know, Mr. Van Riper? Why did he telegraph you?

A. He had asked me if I would come down if he sent for me before he left New York.

Mr. BEACH: Very well.

By Mr. BEACH:

Q. What took place at this interview, Mr. Van Riper, after Mr. Peckam had introduced you to Mr. Holmes?

A. Well Mr. Peckam said "This is the man I told you about that is in the Department, and he is willing to show you that he can——

Mr. LESTER: If your Honor please we cannot hear the witness.

Mr. WORTHINGTON: We might just as well not be here, your Honor, we cannot hear a word that is said.

(The court requested the witness to speak louder hereafter, and the uncompleted answer was read aloud by the stenographer.)

The WITNESS (continuing his answer): "That he can furnish advanced figures on cotton crop reports.

By Mr. BEACH: What had he told you about Mr. Holmes before this introduction?

Mr. WORTHINGTON: I object to that your Honor on the ground that Mr. Holmes cannot be affected by it unless he was told what he had been told.

Mr. BEACH: I think we will show——

The COURT: Suppose you go on with the conversation, and we will see. Perhaps I will not need to pass on that.

Mr. BEACH: Yes sir.

By Mr. BEACH:

Q. Now just state the conversation there in this room after the introduction by Mr. Peckham of you to Mr. Holmes.

A. Mr. Holmes said that he was associate statistician, and showed me a bulletin with his name printed on it.

Q. Who showed you this?

A. Mr. Holmes.

Q. Well, continue. What further did he say?

A. He said that he would not only—he said that he practically made the figures up; that Mr. Hyde took his estimate always, and that he could always tell, the day before the report was issued, what the figures were going to be.

Q. Who was Mr. Hyde?

A. Mr. Hyde was the statistician at the time.

Q. Well, continue.

A. Well he went on to say that he had been furnishing these figures in advance to a large New York operator for some time and that he at that time had $55,000 in cash in his safe deposit vault that he had obtained from that source.

Q. Proceed and give us the substance of that talk as well as you can.

A. He was very friendly to Mr. Peckham, and was willing to furnish him the figures in order to help Mr. Peckham.

Q. Go on. What, if anything, did he say as to an approaching wheat report?

Mr. WORTHINGTON: I object, your Honor, to this leading style of examination until the witness has said that he has said all he can recall of the conversation.

Mr. BEACH: No; I do not think that he has said, that he has said all he can remember.

Mr. WORTHINGTON: Has he said that?

Mr. BAKER: No; he has not said so.

The COURT: Let him state it all until he has exhausted his recollection.

Mr. WORTHINGTON: Now I will ask the District Attorney that he carefully observe that rule in all the testimony of this witness as to conversations.

Mr. BEACH: Thank you; yes. We shall try to do that.

Mr. WORTHINGTON: Because after the question has been asked and objected to, the harm has been done.

The COURT: That is true. Of course the witness is testifying about an important part of the case, and the rule is pretty strict.

Mr. BEACH: I am quite sure that Mr. Worthington will understand that I do not mean intentionly to lead or suggest anything to the witness.

Mr. WORTHINGTON: I do not suggest that for a moment, Mr. Beach; but the inquiry is just the same as if you did do it.

Mr. BEACH: I think you will find that this will come out in due course properly.

By Mr. BEACH:

Q. State all that happened, if anything further in addition
29 to what you have told us about.

A. I said that if he could furnish me with the proof that he could get these figures in advance, I would be willing to operate and do the right thing by Peckham; and he then wanted to know what division I would make. I told Peckham I would give him two-thirds of the profits. He said that he was willing to prove to me that he could give me the exact figures, and that he had been furnishing them to a New York party through another man, and arranged that if I would come down on the 9th he would give me the advance figures on the report that was to be issued on the 10th.

Mr. WORTHINGTON: I object, your Honor, to any reference to the other crop reports in this case.

The COURT: Being a part of the same conversation, and apparently said for the purpose of effectuating the object of the meeting I think it cannot be excluded. Of course the jury will understand that that is not one of the charges here.

Mr. WORTHINGTON: The only charge here is about cotton.

The COURT: The only charge here is about cotton.

Mr. WORTHINGTON: I would like to have an exception noted of it your Honor.

The COURT: An exception may be noted.

By Mr. BEACH:

Q. About how long were you engaged in this interview, Mr. Van Riper?

A. Oh, I should say half to three quarters of an hour.

Q. Is that all the conversation that happened there?

A. Mr. Holmes then arranged to report to Mr. Peckham, and Mr. Peckham was to report to me; but on account of Peckham going away, having a western engagement, he asked me to come down on the 9th if Mr. Holmes would agree to see me; so I came down on the 9th.

Q. What had Mr. Peckham told you of Mr. Holmes before Mr. Peckham introduced you to Mr. Holmes?

A. Mr. WORTHINGTON: I object to that, your Honor, on the ground that Mr. Holmes cannot be affected by anything of that kind unless it was reported to Mr. Holmes or he was in some way advised of it.

Mr. BEACH: If your Honor please, I simply want to show that he told Mr. Van Riper in substance just what Mr. Holmes confirmed at this meeting.

Mr. WORTHINGTON: That does not remove my objection

The COURT: Mr. Peckham was present, as I understand it. Mr. Van Riper says to Mr. Holmes: "Mr. Peckham has told me so and so," and Mr. Peckham does not contradict it. I do not see how you could add anything to it by putting in anything as to whether Peckham had or had not told him so before.

Mr. BEACH: My attention is called to the further fact that the introduction is laid as one of the overt acts, too. The undertaking was that they would procure somebody such as Van Riper and bring them together for the purpose of the joint operation on the information that Holmes would give out in advance of the crop report.

30 The COURT: Has he not testified that he came there by request of Mr. Peckham?

Mr. BEACH: Yes sir.

Mr. WORTHINGTON: They put the telegram in.

The COURT: That seems to cover that point.

By Mr. BEACH:

Q. Did anything further happen in that conversation, Mr. Van Riper?

The COURT: Will you point me to the clause in the indictment in support of which you have just offered this testimony? You may go on.

(The pending question was read aloud by the stenographer.)

A. Except that it was arranged that I was to come down on the afternoon of August 9th to meet Mr. Holmes at the Willard.

By Mr. BEACH:

Q. Before we come to that date, what became of you and what became of Mr. Peckham?

A. Mr. Peckham went west to Arizona.

Q. What did you do?

A. I *I* went to New York.

Q. Do not answer this question until Mr. Worthington has had an opportunity to object. Have you told everything that you remember as passing between you three on that occasion?

Mr. WORTHINGTON: I do not make any objection to that of course.

Mr. BEACH: I am going to follow it of course with another question.

Mr. WORTHINGTON: Let us see what he says in reply to that.

A. Everything of importance that I remember.

Mr. LESTER: What is that?

The WITNESS: Everything of importance.

By Mr. BEACH:

Q. Now, do not answer this question until Mr. Worthington has had an opportunity to object to it; if Mr. Worthington prefers I will state it to him quietly.

Mr. WORTHINGTON: I suppose, from what I know of your Honor's rulings heretofore in similar circumstances, you will now allow him to ask a leading question, or to call his attention to something that the District Attorney claims he has forgotten?

The COURT: Yes; just suggest the subject.

Mr. WORTHINGTON: I should think it would be sufficient to suggest the subject to him, without putting the words in his mouth.

Mr. BEACH: I have no idea of putting the words in his mouth.

Mr. WORTHINGTON: I mean, you should ask the question with reference to a certain topic, instead of asking whether such and such a statement was made.

By Mr. BEACH:

Q. What if anything was said as to information being furnished some one else by Mr. Holmes?

A. Mr. Holmes said he *jad* been furnishing information to Theodore H. Price of New York.

Q. And who was he if you know?

A. A cotton operator of New York.

Q. And in what way? Do not answer this question until Mr. Worthington has had a chance to object.

Mr. WORTHINGTON: I do not see, your Honor, exactly why so many efforts are made to bring in the name of Mr. Price, or
51 what difference it makes whether Mr. Holmes did or did not say he *said he* had been giving information to somebody else.

Mr. BEACH: We think it makes a great deal of difference.

The COURT: It is a part of the conversation, and apparently, (assuming this witness's statement to be true) was used for the purpose of convincing him that he could do what he said he could. I do not suppose that he can carve out any part of it.

By Mr. BEACH:

Q. In what way was the information being furnished?

Mr. WORTHINGTON: Ask him what he said about it.

A. Through another party. He did not mention the name at that time.

Q. You say that he did not mention it at that time. Did he subsequently mention the name of this party?

A. Yes sir.

Mr. WORTHINGTON: Who did—Holmes or Peckham, or who was it subsequently mention- it?

Mr. BEACH: Holmes.

Mr. WORTHINGTON: You ask him him "did he subsequently mention it"?

Mr. BEACH: I asked him of course, about Mr. Holmes, because he was referring to what Mr. Holmes was telling him

By Mr. BEACH:

Q. Who was that party?

A. Moses Haas.

Mr. WORTHINGTON: Of course I object to that. The District Attorney evidently did not understand me. Mr. Beach, the witness may be speaking from what Mr. Holmes said to him or from hearsay, as far as that answer goes.

By Mr. BEACH:

Q. Who did Mr. Holmes say was the party he was furnishing this information through?

A. Moses Haas, of New York.
Q. And did Mr. Holmes say who he was?
A. He did later.
Q. What did he say about him?
A. Well, he introduced me to him later.

Mr. BEACH. I will have to put rather a direct question here, and I will state it to you Mr. Worthington, before I state it orally, if you prefer?

Mr. WORTHINGTON: No; I do not care about that. I object to leading questions of this witness.

Mr. BEACH: It is about this same conversation; I simply want to direct his attention to something. I do not want to do anything that Mr. Worthington objects to, and I am perfectly willing to tell him what the question will be.

Mr. WORTHINGTON: I understand his Honor's rule is to be that you may now ask leading questions, when you have exhausted him in that way; and all I can do about it is to call attention to it, indicating that he has to be told what it is before he remembers it.

By Mr. BEACH:

Q. Was anything said to you at this conversation by Mr. Holmes as to keeping you advised of the advices given to Mr. Price?
A. Yes sir; there was.
Q. Well what?
32 A. Why, Holmes said that he would keep me advised through Peckham, of what Price's operations were from time to time; he could find out through Mr. Haas.
Q. When did you next see Mr. Holmes after this interview?
A. On August 9th.
Q. And where?
A. At the Willard Hotel, Washington.
Q. Tell us *at* what happened at that interview?
A. I met Mr. Holmes in the lobby or office of the Willard, and we went down to the Café and sat down to a table, and he said: "Now put this down. This will be the figures on the wheat report tomorrow." So I took a pocket check book and *and* wrote it down on the fly leaf of that check book, just as he gave it to me.

Mr. WORTHINGTON: I do not want to be repeating objections. I do not know that your Honor has ruled that this wheat crop business could be referred to; but I understand it was admitted the other time because it was part of the same conversation in which the matter of the cotton was discussed. It now seems to be an entirely independent transaction, not in any wise referred to in this indictment as part of any alleged conspiracy or as any part overt act.

The COURT: If it was before the matter was completed, before the arrangement was completed between them, I think it would be admissable.

Mr. WORTHINGTON: The witness has not given any indication in what he has said yet your Honor, that there was anything left incomplete after the alleged interview of August 6th.

The COURT: I do not know whether they closed the arrangement at that time or not.

Mr. BEACH: It is proof of his ability to give advance information.

Mr. WORTHINGTON: He stated it was closed then, and stated what the division was to be.

Mr. BEACH: It was proof of his ability to do what he said he could do that is all.

The COURT: I understand that he said at that interview that he would demonstrate to him that he could do it; and this was a sort of condition of the arrangement being completed, I understood him to say. Is that your view of it.

Mr. BEACH: Yes sir that is the purpose of it.

The COURT: I do think it could be excluded then.

Mr. WORTHINGTON: I would like to have an exception to it now.

The COURT: It will be under the same exception.

Mr. WORTHINGTON: There is another objection I would like to make at this point. I understand something was reduced in writing at that time. I object to say——

Mr. BEACH: We are going to show it to him.

Mr. WORTHINGTON: Very well.

(A paper was handed to the witness.)

By Mr. BEACH:

Q. Without saying what is on that paper what is it?

A. That is the fly leaf from my check book that I wrote the figures on.

Mr. BEACH: That is Exhibit 24.

(The paper above referred to was exhibited to counsel for the defendant.)

Mr. WORTHINGTON: Very well.

Mr. BEACH: Do you object to that?

Mr. WORTHINGTON: We make no objection to it in view *to*
33 his Honor's ruling, as covered by his ruling.

By Mr. BEACH:

Q. Now read and tell us what it is.

Mr. WORTHINGTON: He has already stated that Mr. Holmes made that memorandum, has he?

Mr. BEACH: He made the memorandum in Mr. Holmes' presence.

Mr. LESTER: Who made the memorandum?

Mr. BEACH: He did himself in Mr. Holmes' presence.

By Mr. WORTHINGTON:

Q. Did you say that you made or that Mr. Holmes made it?

A. I made it.

Q. Oh, you made it.

A. Yes sir.

By Mr. BEACH:

Q. In his presence?

A. Yes sir.
Q. And from whom did you get the data that you put down there?
A. From Mr. Holmes.
Q. Now read that memorandum and explain it.
A. "W., 12.3 per acre. 333 million bushels."
Q. Explain that what does it mean?

Mr. WORTHINGTON: If there was any explanation made at that time, your Honor, he can give that, I submit, but not otherwise.

By Mr. BEACH:

Q. That was a memorandum of what?
A. Of Winter wheat yield which was to be 12.3.

Mr. WORTHINGTON: I still object, your Honor, and I insist that this witness shall state what Mr. Holmes said to him. He cannot make a memorandum of his own and bring that here and then impute anything to Mr. Holmes about the memorandum unless this is something that Mr. Holmes said, or that he said to Mr. Holmes.

The COURT: That is all true.

By Mr. BEACH:

Q. What did Mr. Holmes say?
A. Mr. Holmes said that the report would show Winter wheat yield per acre 12.3, a total of 333 *a* million bushels; a Spring wheat condition of 87.5 and that accompanying this report would be a statement to the effect that rust had made its appearance in a number of counties in the northwest, but at this time reports were incomplete, and it was impossible to estimate the damage on this account. He also said that last year the Spring wheat condition for that month was 93.7 and that the last year's Winter yield was reported at 410 million bushels in that year, and that the final report had showed a yield of 399 million bushels. He also said that if I wanted to communicate with him personally to address him at box 166 Washington.
Q. What did you do after that interview?
A. I went back to New York.
Q. And then what happened?

34 Mr. WORTHINGTON: I object to this, unless it is something that Mr. Holmes had something to do with. He cannot go off and make evidence against Mr. Holmes by anything he did, your Honor.

Mr. BEACH: This will — brought back to Mr. Holmes. He reports what he does to Mr. Holmes later on, as I understand it.

Mr. WORTHINGTON: Then I submit that the proper evidence is the report and not what he says he did.

The COURT: The question is what the indictment charges on the subject.

Mr. WORTHINGTON: It does not charge anything about wheat; it is confined exclusively to cotton.

Mr. BEACH: It was charged that he was able to give out this information.

The COURT: Are you asking about when?

Mr. BEACH: Yes sir I was asking what he did as the result of this interview.

The COURT: Of course that is so broad that I cannot say whether the answer will be admissible or not.

Mr. BEACH: My inquiry is what use he made of this information.

The COURT: Information as to what?

Mr. BEACH: This information given here.

The COURT: As to wheat?

Mr. BEACH: Yes what the report would be next day. As I understand we are to bring that back to Mr. Holmes.

The COURT: That would not necessarily make it admissible, because there is no charge about that. I think you would be—or perhaps I ought not to state it to the jury, if you will step to the bench I will tell you what I think about this. (The following proceedings, until otherwise stated, took place at the bench out of the hearing of the jury.)

The COURT: I suppose you were going to show that when the report came out he compared it and found that it was—

Mr. BEACH: That he operated on it, and that they then entered into other deals in cotton. I think there was a loss on that deal which was made up in another deal. This deal was taken account of in the subsequent transactions between the parties.

The COURT: Did Holmes call his attention to the fact that his forecast on the wheat report was correct, and did they then and thereon close the other arrangement?

Mr. BAKER: Yes; we are going to show that they went ahead and treated it as closed.

Mr. BEACH: We *have* already the report in evidence, which confirms this, as I understand it.

The COURT: Now, to show that this condition was complied with, that he should convince him that he could forecast the reports, would not require any proof that he operated, but only that the figures corresponded.

Mr. BAKER: I say, Your Honor, this is admissible on a broader ground than it has been offered on, and that is that any conspiracies in regard to crops that were entered into between this witness and Mr. Holmes and Mr. Peckham are admissible in this case.

35 Mr. BEACH: Along about this time.

Mr. LESTER: If your Honor please, in two former indictments there was some reference made to operating in wheat. Those were afterwards carefully eliminated from this indictment.

Mr. BEACH: There was nothing in the other indictment about that.

Mr. LESTER: Yes; there was something about wheat, and it was cut out and we had no notice whatever that anything about wheat was to be brought out. By comparison of this indictment with the others we found that to be the case. There is absolutely nothing concerning wheat here at all in this indictment.

Mr. WORTHINGTON: (After some remarks which the stenographer could not hear.) I understand that what is offered here differs from

such offences as passing counte-f-it money. When a man who is charged with passing a counte-f-it bill passes another of the same denom-ation, it calls for an explanation: but I do not see how the fact that a man is charged with a cons-pir-cy to furnish information in regard to cotton would make it competent to show that he entered into a separate and independent agreement to furnish advance figures on wheat or anything else.

The COURT: What *is* your theory—that it shows relations?

Mr. BAKER: That it shows the relations of the parties. We had the same question here in the case of the United States vs. Green, and we proved an entirely independ*ent* conspiracy, not connected as this is, with the immediate conversations in regard to the cotton deal.

The COURT: But you state also that it entered into their computations.

Mr. BAKER: It entered afterwards into their computations.

The COURT: And was treated as part of the other matter.

Mr. WORTHINGTON: What would be competent would be to show what was reported to Holmes, and what took place. We come back to what was said the other day—that this is a charge of agreeing to give out information. That is the conspiracy. It does not make any difference whether they made money or lost it, except as it bears on that proposition. So that it is utterly immaterial whether, in the cotton deals they made money or lost money. It is a thousand times farther away to show that he made or lost money in something else.

The COURT: They went into it to make money I suppose.

Mr. BEACH: These different deals, if your Honor pleases, are all part of the object of the conspiracy. Our theory is that Peckham was to get Van Riper or Haas or somebody else, and that they would operate jointly on the information that Holmes gave out. In the case of this deal of August 10th, in the first place this man was going to "make good"—in other words, to show that he could do this thing, as a result of which they went into the wheat deal. Now we further will show that he operated on the information on the wheat market, and losing, deducted that loss from the next deal, which,
36 was in cotton, and which was a profitable one. It is all a se-quence and a series of the joint operations of these people.

The COURT: Do you claim that the subsequent operations were gone into by these parties in furtherance of a conspir-cy by reason of the results of the first operation, so that it is necessary to show what these were to show that they went on that they made some money and then went on?

Mr. BAKER: Yes sir, there is another thing that we want to show besides this question of making money by this witness. We want to show that he showed these figures to somebody, so as to corroborate his testimony that he got them and had them before the cotton re-port—to corroborate the testimony of Mr. Rogers. He is the man who saw this memorandum.

Mr. WORTHINGTON: This memorandum?

Mr. BAKER: A Memorandum sim*ilr* to this.

Mr. WORTHINGTON: I was going to say that the memorandum Rogers testified about was one that was made in his presence.

The COURT: I think it is admissible, the way you state the matter; and I will let you put it in.

(The proceedings from this point on occurred in the hearing of the jury).

(The last two questions and the answer to the first question were — loud by the stenographer, as follows:)

"Q. What did you do after that interview?

"A. I went back to New York.

"Q. And then what happened?

By Mr. BEACH:

Q. Now go on Mr. Van Riper?

A. On the next day I went to the office of C. G. Gates and Company in the Waldorf, and met Mr. Rogers the manager; and I wrote out a memorandum and put it in an envelope and ask- him to put his *name* on it and put the time of day on it and put it in the safe which he did.

Q. What was it you wrote out?

A. The figures on this report as they had been given me by Mr. Holmes.

Q. Then what else did you do?

A. I sold a few thousand bushels of wheat.

Q. You did what?

A. Sold a little wheat — I mean bought a little wheat.

Q. How much?

A. Not very much.

Q. With what result?

A. Well eventually it was closed out with a very small loss.

Q. How did this information, these figures, which as I understand Mr. Holmes gave you on the afternoon of August 9th, compare with the report which came out the next day?

Mr. WORTHINGTON: I object to that, Your Honor, because the report must speak for itself. It is in evidence here.

Mr. BEACH: Well we have that.

Mr. WORTHINGTON: It speaks for itself whether it is in evidence or not. All this about the wheat comes under the same ruling and exception, I suppose, your Honor.

The COURT: It may be considered under exception.

Mr. ADKINS: Exhibit 24 shows wheat 12.3 per acre, or 333 million bushels. The condition — Spring wheat, 87.5. The report shows that "preliminary returns indicate a Winter wheat crop of about 333,100,000, or an average of 12.3 bushels per acre as compared with 12.3 bushels of last year as finally estimated." I am still reading from the report. "The average condition of Spring wheat on August 1st was 87.5 as compared with 93.7 last month.

There is a note in this report after the figures I have already read. "Rust has made its appearance in a number of counties in the northwest; but except as to South Dakota it is chiefly in late or sup-

plemental reports that reference is made to it and such reports being somewhat conflicting in character, it is evidently to- early to estimate definitely the extent of the damage resulting from it."

The note in exhibit 24 is——

Mr. WORTHINGTON: Exhibit 24 has been read once has it not?

Mr. BEACH: We were comparing it with the report.

Mr. WORTHINGTON: I submit, your Honor, that the time for comparin- it has not come yet, there is no use in reading them twice.

The COURT: You may read them for purposes of comparison, if you wish it will do no harm.

Mr. ADKINS (reading): "Rust made its appearance in a number of countsies N. W. Somewhat conflicting in character. Impossible to estimate damage at this time."

Mr. WORTHINGTON: We would like to have that report copied in full in the record.

Mr. ADKINS: Have you not got copies of these?

Mr. LESTER: No we have never heard of that report before.

Mr. ADKINS: This whole book has been put in evidence.

Mr. LESTER: We did not understand it was put in evidence except as to cotton crop reports.

The COURT: That has been read; it will — treated of course as in evidence.

Mr. WORTHINGTON: Well we would like to understand that, your Honor. We do not understand that every thing in that book has been put in evidence. The book has been identified, and is here so that without any further proof either side can offer anything in it.

The COURT: I think that is correct.

Mr. BAKER: If your Honor pleases, we had the book gone over by a witness identifying Holmes' signature to all the reports, and we offered the book for the purpose of showing Holmes' duties down there, and his knowledge, as *he* could be argued from that book, and of course the whole book for that purpose is in evidence.

38 The COURT: For the purpose of showing that he signed such reports as he did sign; to show how he acted, what place he held, what he knew about things—yes.

Mr. WORTHINGTON: There is no objection to this being offered in evidence for that purpose.

The COURT: I will make one suggest- here, in view of your offer, of course it is not merely the fact that the figures in the report did correspond with the forecast, but that he found out that they did. You will have to show that in order to make the offer good, I think.

By Mr. BEACH:

Q. Did you see the wheat report of Aug. 10th 1904, when it was published?

A. I saw the newspaper accounts of it.

Q. Did you compare it with the memorandum that you just referred to?

A. Yes sir.

Q. And with what result?

A. It was exactly the same.

Q. After giving this slip to Mr. Rogers was there anything further that passed between you and him in reference to it?

A. Not until after the report was published.

Q. Then what happened?

A. I had him take it and open the envelope and compare it with the published reports.

Q. Did you have any further dealings with Mr. Holmes after this wheat report?

A. Yes sir.

Q. How did you deal with him—personally or by correspondance, or in what way?

A. I had some letters from him during the month of August.

Q. How many?

A. Three I remember of.

(Handing paper to witness.) I hand you exhibits 2 *and* 7 inclusive, and ask you what they are?

Mr. WORTHINGTON: Are you putting in now only the letters which he says Mr. Holmes wrote him?

Mr. BEACH: Yes—the letters and the envelopes.

By Mr. BEACH:

Q. What are those?

A. They are letters from Mr. Holmes.

Mr. BEACH: I offer these in evidence and purpose to read them one after the other

Mr. WORTHINGTON: I suppose it would be well to go through the usual form of proving Mr. Holmes' handwriting.

Mr. ADKINS: That has already been done.

Mr. WORTHINGTON: That has been done by somebody else.

Mr. ADKINS: Yes.

By Mr. BEACH:

Q. Do you know the handwriting of Mr. Holmes?

A. Yes sir.

Q. Are these exhibits that I have shown you in his handwriting?

A. They are.

Q. And received by you at the place to which they are addressed?

A. Yes sir.

Mr. BEACH: Exhibit No. 2, gentlemen is an exhibit marked "personal addressed Mr. L. C. Vanriper, 108 Fulton Street, New
39 York, N. Y." The post mark is Washington, August 18, 12.30 P. M. 1904."

I will explain to you, gentlemen of the jury, that these are just exhibit marks for the stenographer's identification. The letter itself reads as follows:

"AUGUST 18 '04.

"DEAR MR. VAN RIPER: Other parties have changed plan*d* "slightly, and I think it advisable for you to know about it. Can't "you come here on Saturday night or Sunday? If not I might be

"able to go to New York Saturday afternoon. Write me on receipt "of this, and if you decide to come here tell me when to meet you "and where.

Yours, H."

By Mr. BEACH:

Q. What was meant by the opening sentence—"Other parties have changed plans slightly, and I think it advisible for you to know about it"?

Mr. WORTHINGTON: I object, your Honor, because he could only know what was meant by something that happened before, or something Mr. Holmes said to him. He is not a mind reader, I suppose?

Mr. BEACH: If your Honor pleases, in spite of Mr. Worthington's witticism, we understand that the defendant undertook (and I think I recite the evidence properly this morning) to keep Peckham or Haas or both of them advised about somebody else.

The COURT: I understood that the jury might infer that this refer-ed to that, of course: But I hardly think that he could say so. If Mr. Holmes said anything about this, either before or after, he may state what Mr. Holmes said about it. If he talked with Mr. Holmes about that statement in the letter. Of course he can state what he said about it.

Mr. BEACH: I understand the situation to be, — Your Honor, pleases (and I want to be corrected if I am in error) that they had already talked about certain other parties: and I am asking him now what this refers to.

The COURT: Yes: that is just what is objected to, and what I am a little afraid of. Perhaps you *ought* better find out first whether Mr. Holmes ever told him or ever refer-ed to this clause afterwards, or whether there are any circumstances that he can tell us — would enable the jury to say who was refer-ed to.

By Mr. BEACH:

Q. Do not answer this question until Mr. Worthington has an opportunity to object. Had anything been said between you and Mr. Holmes as to the plans of anybody?

A. Yes sir.

Q. What?

A. He told me that Price's plans were to buy cotton during the latter part of August in anticipation of a bullish crop report in September, and he promised to keep me advised as to their operations.

Q. And when was the conversation, Mr. Van Riper?

A. This was the 7th day of August.

40 The COURT: That is whether there has been any arrangement between them as to any other person.

Mr. BEACH: If your Honor will allow me I will *ahve* the stenographer read your question.

(The stenographer read aloud the remarks of the court.)

By Mr. BEACH:

Q. Were there any persons other than Mr. Price whose plans were to be kept track of?

A. No, sir.

Q. What did you do after getting this letter, if you recall: what action did you take on the letter?

A. I didn't do anything.

Q. I now hand you exhibits No. 4 and 5 and ask you if they are in Mr. Holmes' handwriting, and whether they were received by you at the place and address named?

A. They are.

(Exhibits No. 4 and 5 are in words and figures following towit:

"4" (an envelope) "personal Mr. L. C. Van Riper 108 Fulton Street New York, N. Y." (Post marked) Washington, D. C., Aug. 21, 1904, 7:30 A. M."

"5" "AUG. 21, 1904.

DEAR MR. VAN RIPER: Yours received: That matter can wait a few days. Better have P. come as I can't get away before Saturday afternoon. Just getting over a bad chill. Hope to be O. K. tomorrow.

Yours, H.

You got my initials wrong on last letter."

By Mr. BEACH:

Q. What was the matter referred to here by "that matter can wait a few days"?

Mr. WORTHINGTON: I object to that on the same ground that I objected to his attempt to read Mr. Holmes' mind in the other case.

The COURT: I think that would be a matter of fact probably, and at least, if he acted on these letters his understanding of what they referred to would be admissible.

Mr. WORTHINGTON: I would respectfully submit that that would be a great injustice to the defendant. He is bound if he wrote the letter, by what he said in it; but what it may have conveyed to somebody else who received the letter and who may have conceived that it meant something else and acted upon it, would not in any way affect the defendant. If there is anything that has taken place — this witness and Mr. Holmes, it would help to enlighten the matter.

The COURT: What is the clause you are asking about?

Mr. WORTHINGTON: Your Honor will remember that this was August 21st and that at that time there was nothing being done in regard to crop reports.

The COURT: It says "your letter received", and that would of course refer to a matter in that letter written by him. He can state the matter in his letter and what he has written about.

By Mr. BEACH:

Q. What other matter was there between you and Holmes than what you *have* already told us?

Mr. WORTHINGTON: I object to the form of that question because he has not testified there was *any* other matter.

The COURT: What if any other matter——

Mr. BEACH: The witness has come to a point where he says that

he communicated with Holmes ab : t a certain matter they had in mind. I am reading these letters to show what communication was had between them and what actually passed in accordance therewith, and I come now, in the order of correspondence, to the second letter which acknowledges a letter from Van Riper and refers to "that matter" as being a matter that "can wait a few days". I am asking now what the *ans*-er was?

The COURT: I think you would have the right to show what he had written in a letter to which this is a reply, because apparently the jury might think it refer-ed to what he had written him in that letter.

By Mr. BEACH:

Q. What if any letter did you write Mr. Holmes after the receipt of the first letter if you know?

A. I don't remember the contents. I remember I wrote him a short note in reply to it.

The COURT: The question was what it was about. Do you know what it related to—not the exact wording of it or any thing of that sort?

A. It related to operations in the market.

By Mr. BEACH:

Q. It is suggested to me that I ask you if there was any other matter between you and Mr. Holmes?

A. No, sir.

Q. In the next sent*ence* it says: "Have P. come, as I can't get away before Saturday afternoon." What does that mean?

Mr. WORTHINGTON: I make the same objection. It is strange Mr. Beach cannot conform to your Honor's ruling about this.

Mr. BEACH: I am trying to do so.

The COURT: I think what you want to know really is what he refers —. I think he would have a right to state that.

Mr. WORTHINGTON: Does your Honor rule that he has a right to say what he me-nt to say about it?

The COURT: I think that comes within the rule I have always understood to be followed in such matters, that where there is correspond*ence* between parties and there is an initial used, or any thing of that kind, the witness may state the fact as to whom it refers. I will permit that under exception.

Mr. WORTHINGTON: Very well.

By Mr. BEACH:

Q. Who does P. refer to in this let-er of August?

A. It means Peckham.

Q. I show you now exhibits 6 and 7 and ask you in whose hand writing they are?

A. Mr. Holmes'.

Q. Did you receive them?

A. I did.

Q. At the place to which they are addressed?

A. Yes sir.

(Exhibit No. 6 is in the words and figures following, to-wit):

"6" (An envelope) "Mr. L. C. Van Riper, 108 Fulton
12 Street. New York, N. Y. Personal." (Post Mark) Washington D. C. Aug. 30, 7 P. M. Sta. M."

Mr. WORTHINGTON: There is something on that envelope you have not read.

Mr. BEACH: I would be glad to have you read everything that is there.

Mr. WORTHINGTON: I will show you something. It is right there—a memorandum in shorthand.

The COURT: Shorthand notes not being customery on an envelope perhaps you *shd* better ask the witness about that.

By Mr. BEACH:

Q. What do you know about the Hieroglyphics on the envelope, on the left hand corner.

A. I don't know anything about them.

The COURT: Then pay no attention to them.

By Mr. BEACH:

Q. Were they on it when you received it?

A. I don't remember that they were.

(Exhibit No. 7 is in words and figures following, to wit:)

"7" "Aug. 30, '04.

"If you *shv*e bought any of that stuff sell it out at once and sell as much as you can in addition. We are going to show very slight decline, and as this is totally unexpected it will send things down like fury. Other parties will close out tom*a*rrow and sell on Thursday.

Where is P.?

Tear this up.

H.

It may go a little before Friday but prosably not."

By Mr. BEACH:

Q. When was that written on the back of the letter?

A. That was written in June.

Q. In June what year?

A. The 6th of June 1905.

Q. Where?

A. At Secretary Wilson's office.

Q. You said you knew Mr. Peckham. Are you familiar with his handwriting?

A. Yes sir.

Q. I will ask you in whose handwriting these two letters are?

A. F. A. Peckham's.

Q. Did you receive them from him?

A. Yes sir.

Mr. WORTHINGTON: You have got the envelope here; have you?

Mr. BEACH: No. I now offer in evidence our exhibits No. 8 and 9.

(Exhibits No. 8 and 9 are in the words and figures following, to-wit:)

"8" "METROPOLITAN HOTEL.
WASHINGTON, D. C., *Aug.* 31, '04.

L. C. Van Riper, Esq., 108 Fulton Street, New York City.

DEAR VAN: About 85. It will surprise everybody and cause big drop—is opinion of best experts. There will be things doing sure. A drop of only about six points. This is one of the highest 43 averages for this (Sept.) month ever known, is way above 10 year average.

Tear this up. Do all you can.

"F."

"(9" METROPOLITAN HOTEL.
WASHINGTON, D. C., 8/31, '04.

Letter No. 2.

Party for price here tonight to make sure of figures tomorrow (Thursday). They are going to sell all they can without breaking market if they can. It may break tomorrow Saturday, soon as report is out (perhaps before) they cut loose selling every thing in sight. Get in tomorrow early. *Be sure to close out Friday*, as soon as effect of report has been shown.

No. market Saturday (Holiday) and none Monday so I understand. This is the best chance ever will have.

Destroy."

By Mr. BEACH:

Q. Referring to exhibit No. 7, being the last letter from Mr. Holmes to you, dated August 30, which I read, I will ask you to explain the sentence "if you *ah*ve bought any of that stuff sell it out at once." What does that mean?

Mr. WORTHINGTON: I make the same objection, your Honor.

The COURT: I think he may state what, if any stuff he bought with the knowledge of Mr. Holmes.

Mr. WORTHINGTON: The letter says "if you *ah*ve bought any stuff" which implies that he does not know.

By Mr. BEACH:

Q. May I ask if there was any stuff that he was to buy, as understood by Mr. Holmes and Mr. Peckham?

The COURT: If he had any arrangement with Mr. Holmes as to buying any stuff, he may state what it was.

By Mr. BEACH:

Q. Did you have any arrangement with Mr. Holmes as to buying any stuff?

A. I don't know as I can answer that by yes or no.

Q. Give your own answer to it.

A. At the time we met it was thought that Price's plans were to buy, to load up with a long line of cotton during the latter part of August, in anticipation of a bullish crop report. I had not bought any at this time, because the advices had not been definite enough to suit me. Mr. Peckham was west, and between the receipt of that letter Peckham had been down here and had come to New York. He told me to go in and buy; but I was not quite satisfied and had not done anything. Then I got this letter from Mr. Holmes. Peckham was then either on his way here to Washington or was here, when I got the letter.

Q. Did you have any conversation with Peckham before this letter of August 30 was received?

A. Yes sir.

Q. What was that.

44 Mr. WORTHINGTON: Not in the presence of Mr. Holmes, I suppose?

Mr. BAKER: No not in the presence of Mr. Holmes. We are offering in evidence his declaration of the conspiracy, and in furtherance of the conspiracy.

Mr. WORTHINGTON: I object to reasoning in a circle, by proving first a conspiracy by the declarations and then proving the declaration by the conspiracy.

The COURT: It sounds very familiar in this court room. Of course we have got to have some evidence of conspiracy outside of such declarations; but as I understand it these were directions from Peckham and advices as to buying and selling the very subject matter of the conspiracy, the very thing to be done.

Mr. WORTHINGTON: Of all the alleged conspiracy your Honor.

The COURT: Yes of course of all the alleged conspiracy. I think it is admissible.

Mr. WORTHINGTON: I would like to have an exception noted to that.

The COURT: An exception *may* be noted.

By Mr. BEACH:

Q. What was that conversation?

A. It was to the effect that he had been down here and had a talk with Mr. Holmes.

Mr. WORTHINGTON: I object to that. The witness was not here.

Mr. BAKER: He stating a conversation he had with Peckham.

The COURT: If he means that Peckham told him he had been here it is admissible, under this ruling.

Mr. WORTHINGTON: He was not saying that or I would not have interposed.

The COURT: Do you mean that?

The WITNESS: Yes sir.

The COURT: Go on.

A. And that Price had been selling but was buying cotton at the time Peckham came up. This was several days prior to that letter. He came up with the advice for me to begin buying cotton; but I hadn't done anything when I got his letter.

By Mr. BEACH:

Q. I will ask you whether you had bought any cotton up to the time of this talk with Peckham?

A. Not on account of Peckham.

Q. Did you *ab*ve any talk with Peckham about buying any for the account of your people?

A. Yes sir.

Q. For whom?

A. Not before this letter was received though.

Q. Not before this letter was received.

A. No sir.

Q. After receiving this letter what did you do in regard to this cotton deal?

A. I sold a little cotton.

Q. You will have to explain what you mean by selling cotton and buying cotton.

A. I sold it short.

Q. You will explain that I expect.

A. Well it is merely selling for future delivery.

Q. What is the object of that; what do you expect to do when you sell short?

A. We expect to buy it at a lower price.

Q. What do you expect the market to do?

A. We expect it to go down.

Q. You expect the market to go down?

A. Yes sir.

Q. Referring to the letter of August 30 again, Exhibit No. 7, it continues: "We are going to show a very slight decline; and as this is totally unexpected it will send things down like fury. Other parties will close out tom*a*rrow." What do you understand to be the mea*b*ing of these words, "We are going to show a very slight decline and as it is totally unexpected it will send things down like fury?

A. It means that the government figures will.

Q. The government figures?

A. Yes sir.

Q. The government figures of what?

A. Of September 3rd.

Q. On what crop?

A. On the cotton Crop.

Q. What is the meaning of this part of it: "where is P." to what does that refer?

A. To Peckham.

Q. Did you show this letter to Peckham or communicate its substance to him?

A. I didn't see Peckham.

Q. Exhibit No. 8, the letter of August 31, 1904, from Peckham to you reads; "About 85." What does that mean?

A. That means the government figures to come.

Q. "It will surprise everybody and cause big drop—is opinion of best experts. There will be things doing sure. A drop of only

about six points. This is one of the highest averages for this (Sept.) month ever known, is way above the 10 year average. Tear it is up. Do all you can. F."

Q. What is meant by a drop of only six points?"

Mr. WORTHINGTON: I object to that.

The COURT: I hardly think that needs any interpretation, in view of the evidence introduced here. The jury will probably — to draw the inference there, whatever it may be. If however, he acted upon it, he can state how he treated it, what he understood it to mean, and what he did upon the strength of it.

By Mr. BEACH:

Q. What did you do if anything, after getting this letter from Peckham of Aug. 31, 1904.

A. I sold cotton on the strength of that letter and a letter from Mr. Holmes.

Q. You sold cotton?

A. Yes sir.

Q. Do you recall with whom you dealt?

A. With C. G. Gates & Company.

Q. Did you read the Government report when it came out?

A. I did.

Q. Did it have any effect on the market?

A. The market broke on it.

Q. What do you mean by the "market broke"?

A. It went down.

Q. Then what did you do?

46 A. I bought the short cotton in that I had sold before.

Q. Did that mean a loss or a gain to you.

A. It meant a profit.

Q. Of how much if you recall?

A. Of about $2100 on that operation.

Mr. BAKER: We want to offer in evidence the report of September 2, 1904, which is Exhibit 80.

Mr. ADKINS: This letter Exhibit 8 is dated August 21, 1904 ——

Mr. WORTHINGTON: If this is to be kept up I would like to have an exception. The District Attorney should not be allowed every time he goes over one of these matters, to give special emphasis to special parts of this testimony.

The COURT: A comparison may be made when a particular piece of evidence is offered with another particular piece of evidence, an exception will be noted if you desire. I do not know how the jury can understand the case in any other way. You do not need to read the whole letter, but you can call the attention of the jury to what they are and the jury can make comparison now.

Mr. ADKINS: The letter is marked exhibit 8, and says: "About 85 it will surprise everybody and cause big drop." is opinion of best experts."

The report is 84.1 as compared with 91 for the month before and a ten year average of 73.2.

This report was issued on Sept. 2, 1904, at 1.15 o'clock P. M.

By Mr. BEACH:

Q. I do not remember whether I asked you what the profit on that speculation was.

A. About $2100.

Q. What was done with that money?

A. I deducted $105.00 from the August wheat deal, which was practi-al-y the loss on that trade, the actual loss was $106.25 but I did not have the exact figures with me I paid Peckham two thirds of the balance.

Q. I think you said you knew the handwriting of Peckham and Holmes?

A. Yes sir.

Q. I show you exhibits No. 10, 11 and 13, in whose handwriting is the face of exhibit No. 13?

A. It is in mine.

Q. Whose endorsement appears thereon?

A. F. A. Peckham's.

Q. In whose handwriting is the face of No. 10?

A. My own.

Q. Whose name appears on the back?

A. F. A. Peckham and E. S. Holmes, Junior.

Q. In whose handwriting is this paper exhibit 10 and 11?

A. F. A. Peckham's.

Q. Mr. Baker suggests that I did not ask you in whose *a*handwriting these names on the back of the checks appear.

A. F. A. Peckham's.

Q. And signed?

A. E. S. Holmes Junior.

(Exhibits No. 10 and 11 are in the words and figures following to wit:)

47 "10" (A check)

No. XXX HOBOKEN, N. J., *Sept.* 3, 1904.

The Second National Bank of Hoboken, Through the New York Clearing House Association.

Pay to F. A. Peckham or order Six hundred Seventy and no 100 Dollars $670.00 100.

LEWIS C. VAN RIPER.

(Stamped on face:) Second National Bank, Hoboken, Sept 17, 1904.

(Indorsements:) "F. A. Peckham E. S. Holmes, Jr."

(Stamped on back:) Received payment Through New York Clearing House Sept. 16, 1904. Hanover National Bank."

(Stamp:) "Pay to the order of Hanover National Bank, New York Union National Bank, Phila. W. H. Carpenter, Cashier."

(Stamp:) "Pay any bank or banker, endorsements guaranteed, Central National Bank of Washington City, A. B. Huff Cashier."

"11" (A letter)

Broadway, 31st and 32nd Streets, New York.

SEPT. 3, '04.

Rec'd from Mr. L. C. Van Riper $150.00 cash—and checks for $670.00, $300.00, 220.00/ respect*fully*, paying all acc'ts in full to date.

F. A. PECKHAM."

(Exhibit No. 43 is words and figures following to wit:)

"43" (A check) HOBOKEN, N. J., *Sept. 3rd*, 1904.

No. XXX

The Second National Bank of Hoboken, Through the New York Clearing House Association.

Pay to F. A. Peckham or order, Two Hundred Twenty and no 100 Dollars.

$220.00 100.

LEW*OS* C. VAN RIPER."

(Stamped on face:) "Second National Bank, Hoboken, N. J., Sept. 8, 1904."

(Endorsed:) "F. A. Peckham"

(Stamp on back:) "Pay to the order of the New York Produce Exchange Bank. Anderson & Price Co. Bretton Hall."

(Stamp:) "Received payment through the N. Y. Clearing House Sept. 7 1904, Broadway Branch, N. Y. Produce Exchange Bank."

Q. What does this receipt and what does this check to Mr.
48 Peckham, afterwards endorsed by Mr. Holmes, represent; what was it in payment for?

A. It was two thirds of the profits, after deducting $105. loss.

Q. I notice that in exhibit H under date of Sept. 3rd, three checks are mentioned and only two are presented here, one for $200, and one for $670.00. Where is the check for $300.?

A. I don't know I could not find that.

Q. I hand you a letter being exhibit No. 27 and 28 and ask you in whose handwriting it is?

A. It is in Mr. Peckham's.

Q. Did you receive it?

A. Yes sir.

Mr. WORTHINGTON: This is about wheat, and it comes within your Honor's ruling and *ore* exception.

Mr. BEACH: We offer the wheat report in evidence in connection with this letter. Exhibit No. 27.

(Exhibits No. 27 and 28 are in the words and figures following to-wit:)

"Metropolitan Hotel."

"Mr. L. C. Van Riper.
108 Fulton St. New York N. Y.

(Post mark:) Washington D. C. Sept. 8, 1904, 5.30 P. M.
(Bears a special delivery stamp.)
(Marked "personal" on back.)

"28" (A letter) "Washington, D. C., 9/8.
"Destroy"

"There will be a depreciation of 20 points in Spring Wheat on the 10th- or from 87.5 (last report) 67.5. reduction may be more or less. Such a great reduction will no doubt raise price 5 to 10¢ inside of 2 or 3 days.

This is the best chance will ever have on wheat. Get in heavy.

F.

Mr. Adkins: The wheat report of Sept. 10th 1904, was issued at 4 P. M. The average condition of Spring Wheat was 66.2. This being the first time that Spring Wheat has been separately reported upon in September, the only comparison that can be made is a comperison with a month ago, which is 87.5.

By Mr. Beach:

Q. What did you do after you got this letter which has just been read in evidence, from Mr. Peckham to yourself?
A. I bought wheat.
Q. You bought wheat?
A. Yes sir.
Q. What was the result of that operation?
A. A profit.
Q. What was done with those profits?
A. I paid Peckham two thirds of it.
Q. What were the profits?
A. Somewhere around $2500. I don't remember exactly.
49 Q. Did you subsequent to this time have any further dealings in cotton?
A. I may have traded on my own account from time to time.
Q. I mean on account of the gentlemen of whom we are talking here.
A. No sir.

Mr. Beach: Mr. Adkins will hand you certain letters.

By Mr. Adkins:

Q. I show you exhibits 12 and 13.
A. It is the handwriting of F. A. Peckham and received by me.
Q. Exhibit 14?
A. It is a telegram received by me in New York September 28.
Q. Exhibit 15?
A. That is the handwriting of F. A. Peckham and received by me.
Q. Exhibit 16?
A. That is telegram received by me in New York.

Mr. WORTHINGTON: What is No. 15?

Mr. ADKINS: No. 15 is a letter in the handwriting of Peckham, received by the witness in New York, and No. 16 is a telegram from Peckham and received in New York.

By Mr. ADKINS:

Q. No. 17?

A. It is a letter from Peckham received by me in New York.

Q. Exhibit No. 20?

A. A telegram from Peckham received by me in New York.

(Exhibits No. 12, 13 and 15 are in the words and figures following to wit):

"12" (An envelope)

"The New Willard,
Pennsylvania Avenue, 14*th* and F Streets,
Washington, D. C.
L. C. Van Riper, Esq.
New York, N. Y.

108 Fulton St. Personal.

(Post mark:) "Washington, D. C. Sept. 26, 1904. 11.30a

"13" (A Letter.)

"THE NEW WILLARD.
WASHINGTON, D. C., ——, 190–.

"Long conference Sunday between Colonel and man S. has done something P. does not like. is going without S. knowing it if possible, to put price up high as possible before the first. Then if figures show 79 say, or better, instead 81.4 as before something will drop. Belief is here you can get it going and coming. P. going to *broke* S. later if he can.

Destroy sure.

"15" (A letter)

"THE RALEIGH."
WASHINGTON, D. C., *Sept.* 28, 04.

50 DEAR VAN: As stated over phone party went to B.— 'phoned. N. Y. end evidently did not say anything definite as to movements—but inference was that he was going to get in and buy. When I said over phone party thinks—only advised what Colonel infer-ed—not intended as my "thinking"—Regret cannot get at it more definitely and that program we were told about has not been so far carried out. From talks Col. has had with man—he believes they will start to buy tomorrow if they did not today. Note prices have advanced a little. Remember Mr. P. (in N. Y.) would not say over phone to Balt. things he would if talking face to you—heard my aim on phone as I in this to give you as good an idea as we have to plans.

No use phoning in a. to.—so wire tonight after talking with Col.—since talking to you on phone.

F."

Mr. ADKINS: Exhibit 40 is a telegram from F. to L. C. Van Riper, dated Sept. 28, and received in New York at 12.25 P. M.

Mr. WORTHINGTON: I don't quite see how this telegram has been proved it is what purports to be a telegram signed (F), the whole telegram being in typewriting. I do not see how that telegram is proved nobody can prove the handwriting?

Mr. BAKER: We have proved that we could not get the originals as they were all destroyed. The witness has said that he received this telegram.

Mr. WORTHINGTON: The question I raise is as to how it is connected with Mr. Peckham?

The COURT: He said it was a telegram from Mr. Peckham, if you want to cross examine him on that subject you may do so.

Mr. WORTHINGTON: I don't care to cross examine him I object to it on the ground there is nothing tending to indicate that he knows anything about where it came from.

The COURT: He says he does, and unless you care to cross examine him on the subject I will admit it.

Mr. WORTHINGTON: I will reserve my exception on the ground that he has not showed any knowledge.

The COURT: An exception may be noted.

(Exhibit No. 14 is in the words and figures following, to wit:)

"14" (A telegram) "893–1235."
Received at main office, 253 Broadway, N. Y. Sept. 28, 1904.
A 21 2 W T m 13 Washington D. C. Sept. 28, 12 25 A.

L. C. Van Riper, 108 Fulton St., New York, N. Y.

Nothing new since telephoning. Will not phone at 9 morning unless something develops.

"F".

Mr. WORTHINGTON: There are two other telegrams which
51 come within the same catagory I would like to, have my exception on the same ground.

The COURT: An exception may be noted.

(Exhibit No. 16 is in the words and figures as follows to wit:)

"16" (A telegram) "311–148
"Received at main office, 253 Broadway, New York
A 78 W or 7 Washington D. C. Sept. 9, 1904 1.30 P. M.

L. C. Van Riper, 108 Fulton St., New York.

Will wire fully late tonight special delivery.

"FRED".

(Exhibit No. 17 is in the words and figures following, to-wit:)

"THE RALEIGH." WASHINGTON, D. C. —, 190–.

9 P. M. Trying to get you on phone. This is since talking to you at 7.

L. C. V. R.

At 12 tonight party goes to New York. Before 8 A. M. tomorrow (Thursday) Price will be advised that drop will be 12 to 15 points; that is from 84. Also that Texas report from present data shows a drop from 76 to 49—something remarkable; Col. padded matters, making very strong information which P. will get tomorrow, so he will be sure to Spring right in and buy. Also party will be put in for usual ten thousand. Deterioration promises to be big—very. Reports not all in but important ones received. All shows above. Please destroy at once. Col. says he will put up 50 points tomorrow sure—to get in early and heavy & get all back and more.

(Exhibit No. 20 is in the words and figures following, to-wit):

"20" (Telegram) 2132 1045.
Received at main office 253 Broadway, New York.
A—74W He 6 Washington, D. C. Oct. 3, 1904.

L. C. Van Riper, 108 Fulton St., New York.
Successful bidder best contract ever had.

FRED"

By Mr. Beach:

Q. What if any operations did you have in September, in anticipation of the October report?

A. We bought cotton at first, and then later sold it out and went short.

Q. Tell us what you — buying and then later selling.

A. Cotton is traded in by futures, that is for delivery—say December delivery or January delivery. You buy and sell for delivery in those months.

Q. In this particular month of Sept. when you say we whom do you mean?

A. Well, I bought it.

Q. For what account?

A. In the interest of myself and Peckham.

Q. Why did you buy cotton in September?

52 A. On the strength of Peckham's advice that the report would be very bullish.

Q. What report?

A. The Government report, that was coming on the 3rd of October, and on the advice that Price was buying at that time.

Q. Tell us what you did, what deals you had, why you made them and what the result of them was.

A. I bought quite a line of cotton long, towards the latter part of September, but the market kept going down instead of going up as we expected, so Peckham wired me to come down here or telephone him—I don't remember which. I came down here just before the report was due and met him and Mr. Holmes out here in a park in Washington.

Q. You mean the report for October?

A. I mean the October report.

Q. Can you locate the park; do you know where it is?

A. I have never been there since; but it is a little park on one

of those streets that the cars run on. I think it is Franklin Park; but I am not positive of it.

Q. Who were in the party at the park?

A. Mr. Holmes met us there.

Q. Who did Mr. Holmes meet there?

A. Myself and Peckham.

Q. What happened at that meeting?

A. Mr. Holmes said: "We are all wrong; Price has been selling cotton instead of buying." He says: "You had better get out and go short, the market is going to be bearish.

Q. Explain the difference between bullish and bearish.

A. Bearish means that the market will go down and bullish means that it will go up.

Q. Now continue.

A. I took the midnight train back home that night and began to sell cotton the next day, and sold some up to the time the report came out on October 3rd. Then I received a telegram from Peckham the day the report was due.

Q. Is this the telegram you refer to (exhibiting to the witness Exhibit No. 20)?

A. That is the telegram. It was arranged by Peckham that in case there was no mistake, and the report was as bearish as they expected, he would send me this telegram.

Q. This telegram reads: "Successful bidder best contract ever had."

A. Yes, sir; that was the understanding—that he was to send that message.

Q. Meaning what by it?

A. The *the* figures were more bearish than they had figured on.

Q. Was this arrangement talked about in the park—this telegram and this language?

A. No; that was arranged at my previous visit there. I was down here a day or two before this, on Sunday. I just came down for a visit, and Mr. Holmes arranged a code signal that, in case anything should go wrong in the Department, he was to pull the window shade to a certain point and Peckham then
53 could know it and send me word. If it went better than he expected he was to send me this message, "Best contract ever had." If it was the same as planned it was to be some other message, but I have forgotten what the other codes were, though I understood at that time.

Q. How did this window shade signal figure in it?

A. It was merely a precautionary measure, in case Mr. Hyde should overrule Mr. Holmes or there should be some mistake of some kind, or something should happen so that he could not promulgate the figures that were planned the day before.

Q. Just what use was to be made of the window shade, if you remember?

A. It was only a precautionary measure, in case of accident.

Q. Where was the window shade?

A. In the office of the statistician.

Q. What was the result of that October deal?

A. Well, the market broke on the report; but I didn't close out soon enough and I lost money on it.

Q. Did you win or lose on it?

A. No; I lost money.

The Court thereupon took a recess until 1.15 o'clock p. m.

After Recess.

L. C. VAN RIPER resumes the stand for further direct examination.

By Mr. BEACH:

Q. Mr. Van Riper, I wish to refer now to certain of the exhibits which have already been introduced in evidence and will refer first to exhibit No. 13, which begins: "The long conference Sunday between the Colonel and man." Who was Colonel?

A. Mr. Holmes.

Q. How did he come to have that designation?

A. Mr. Peckham always called him that.

Q. Who was "man"?

A. Mr. Haas, I understood.

Q. "S" has done something P does not like." Who is "S"?

A. It referred to Sully.

Q. Do you know who he is?

A. He was a cotton operator.

Q. Whom did you understand by P—"S has done something P does not like?"

A. Price.

Q. "S has done something P does not like and is going without S knowing it, if possible, to put price up high as possible."

54 You talked with Mr. Peckham about this matter *about this matter;* did you?

A. Yes, sir.

Q. What did you understand by this: "S has done something P does not like. Is going without S knowing it, if possible, to put price up high as possible."?

A. Peckham had told me that Price and Sully were really working together, although they were really opposed to each other at the time, and from this I understood that he was going to throw Sully.

Q. "Is going on without S. knowing it, if possible, to put price up as high as possible." What does that mean?

A. To advance the market as much as he could.

Q. "Then if the figures show 79 say, or better, instead 81.4 as before, something will drop." What does that mean?

A. It means that the market will drop.

Q. It says: "If the figures show 79 or *better*, instead of 81.4 as before." What figures does that refer to?

A. To the cotton report figures.

Q. "Belief here is you can get it going and coming. P. going to break S. later, if he can." P. and S. mean as you have already testified?

A. That is what I understood; yes, sir—Sully and Price.

Q. Coming now to exhibit No. 15, the date of which is September 28, 1904, it says:

"Dear Van—As stated over phone party went to B— phoned." What does that refer to?

A. It means that he telephoned me.

Q. Who telephoned you?

A. Peckham.

Q. Who is "party"?

A. Haas.

Q. "Went to B—" what is meant by that?

A. Baltimore.

Q. "N. Y. evidently did not say anything definite as to movements, but inference was that he was going to get in and bat." Whom did you understand by N. Y."?

A. Mr. Price.

Q. "When I said over phone—party thinks—only advised what Colonel informed." Who is "Colonel"?

A. Mr. Holmes.

Q. "Not intended as my thinking. Regret cannot get at it more definitely—and that program we were told about has not been so far carried out." What program was referred to?

A. Price's buying program.

Q. "From talks Col. has had with man—he believes—" "Col.", I take it, is an abbreviation for Colonel?

A. Yes, sir.

Q. And by that is meant

A. "Man" is Haas.

Q. Who is Colonel and who is Man?

A. Mr. Holmes is Colonel and man is Haas.

Q. "He believes they will start to buy tomorrow, if they did not today. Note prices have advanced a little. Remember that P. (in N. Y.) would not say over phone to Balt. things he would
55 if talking face to face." Who is meant by that?

A. Mr. Price.

Q. "Won't say over phone to Balt. things he would if talking face to face, hence my aim on phone, and in this to give you as good idea as we have as to times. No use phoning in a. m., no wire tonight after talking with Col." What does that mean?

A. After talking with Colonel.

Q. I now call your attention to number 17, dated 9 p. m., and at the head it says: "Trying to get you on phone. This is since talking with you at seven—L. C. G. R." Those are your initials?

A. Yes sir.

Q. At 12 tonight party goes to New York." Who is party?

A. Harris.

Q. "Before 8 a. m., tomorrow, Thursday, Price will be advised that drop will be twelve to fifteen points." What does that mean?

A. A drop in conditions.

Q. "Also that Texas reports, from present data, shows the drop from 76 to 49—something remarkable. Col. passed matters, making

very strong, information which P. will get tomorrow." Colonel, as you have so often said, is who?

A. Mr. Holmes.

Q. Has passed matters." What is meant by that?

A. I don't know what he means; only what he says there.

Q. "Making very strong information which P. will get tomorrow." Who is P.

A. Price.

Q. "So he will be sure and jump right in and buy. Also party will put in for usual 10,000." Who is party?

A. Mr. Holmes and Mr. Harris.

Q. "Usual 10,000" is what?

A. Mr. Holmes told me that Price carried him for 10,000 bales every time these reports came out—carried him and Harris.

Q. Explain what you mean by "carrying him for 10,000 bales?"

A. He *eight* bought or sold 10,000 bales, which he gave them the profit on.

Q. "Deterioration to be big—very. Reports not all in, but important ones are rec'd. All show above. Please destroy at once. Col. says he will put up 50 points tomorrow sure—to get in early and heavy and get all back and more." Col. is who?

A. Colonel; that is Mr. Holmes.

Q. Mr. Adkins will show you exhibit No. 33. Do you know the handwriting?

A. It is Mr. Peckham's handwriting.

Q. From whom did you receive this?

A. From Mr. Peckham.

Mr. Beach: I offer this letter in evidence.

Mr. Worthington: Will you prove all you can about the date of it?

Mr. Beach: The date is not on it.

Mr. Worthington: Can you prove anything about the date. If you do not I object to it.

By Mr. Beach:

Q. I wish you would read the letter (Exhibit 33) to yourself and state when you received the letter?

A. I received it about the 1st of October, 1904.

Q. Please look at Exhibit No. 17, which I read, and state
56 whether you got exhibit No. 33 before or after you received that exhibit No. 17.

A. I think I got this after this one; either just before or just after, and I am not positive which.

Q. Give the number if you will?

A. I received No. 33 either just after 17 or just before it.

Mr. Beach: I offer in evidence Exhibit No. 33.

(Exhibit No. 33 is in the words and figures following, to wit:

"The New Willard, Pennsylvania Avenue, F and Fourteenth Streets.

"F. S. Hight, Manager.

WASHINGTON, D. C., —— —, 190–.

"L. V. C. R.

"Just finished phoning—second time. Believe everything was intended in letter—so far as facts are concerned. Variation, showing depreciation, is estimated at 12 to 15 points. This may vary some—but point for you is—that is information to go to Price in N. Y. to-morrow. It will knock him off his pins, probably, for as far as known he has been figuring differently, as you have been advised.

"Party is expected back here to-morrow night or Friday or Saturday from N. Y. Will advise immediately upon receipt of any new facts.

Looks like the one great chance we have been hoping for.

"F."

By Mr. BEACH:

Q. Party is expected back here tomorrow night, or Friday or Saturday from N. Y." Who is party?

A. That is Mr. Haas.

Q. When did you meet Haas, or about when?

A. In October.

Q. Of what year?

A. 1904.

Q. Where?

A. At the New Willard Hotel.

Q. In this City?

A. In Washington.

Q. Who were present and under what circumstances did you meet him?

A. Mr. Holmes and Mr. Peckham brought him to my room at the Willard and introduced me.

Q. You were yourself at the Willard?

A. Yes sir.

Q. You say somebody brought him there, who was it?

A. Mr. Holmes and Mr. Peckham brought him.

Q. Now tell exactly what happened at that meeting?

A. I would have to go back a little.

Q. Tell it in your own way.

A. This October deal resulted in quite a loss, and although
57 the figures were correct, we had bought higher on advice from Peckham that Price was buying a/bd about the *the* 29th of September I would not be positive of the exact date, but around that time they sent for me to come down here.

Q. Who sent for you?

A. Mr. Peckham and arranged for me to meet Holmes. That was the night we met him in the park. Holmes said the first thing: "We are dead wrong. This report is going to be bearish instead of bullish and Price has been selling cotton instead of buying. You

had better get out and on the other side right away." So I went back to New York that night and started to sell out. I sold out my cotton. Then when I got this advice from Peckham, I continued to sell and went short. The market did break on the Government report, but instead of closing out I held on and there was a quick rally. I closed the stuff out at a loss. Then Peckham came up and said that he had arranged with Holmes to take Haas into the deal. That was so that we could keep closer track of Price's movements. We were so far behind what he was doing was the reason that we had made this mistake and got in wrong. So I came down here and met Haas at the Hotel Willard. They brought him up and introduced me.

Q. Now you may state what took place?

A. Then Haas stated that he had finally agreed to go into the deal on account of Peckham and Holmes insisting that he do although he opposed it and did not want to go in at first; but he finally consented to. So he arranged then that he was to bring the information direct to me instead of to Peckham.

Q. Who was to bring it?

A. Haas, and he was to keep me posted as to Price's operations as well as to bring me information of the Government reports. I agreed to give him two thirds of the profits on any deal that we made jointly.

Q. After this meeting, when did you next see Mr. Holmes and the other parties?

A. Before I answer that, I want to ask if I said two-thirds or three quarter-?

Q. You said two thirds.

A. Well, it was three quarters. I made a mistake if I said two-thirds.

Q. Was there anything further that happened at this meeting in the Willard, at the time of which you are speaking?

A. We talked for quite a while together about various matters but I don't recall the exact conversation.

Q. Was anything said as to the division of this three quarters of the profits?

A. No sir.

Q. When did you next see Mr. Holmes after this meeting at the New Willard, if you can recall, and where?

A. I think I met him in Chicago.

Q. Whereabouts in Chicago?

A. I met him at the Great Northern Hotel or at the Auditorium Annex; and I think at both places.

Q. Who else was in Chicago of these parties, if you know?

A. Mr. Peckham and Mr. Haas.

Q. I believe you have stated that you were familiar

58 — Holmes' handwriting?

A. Yes, sir.

Q. Will you indicate whether you see it on that page (referring to Exhibit No. 141)?

A. Yes, sir; that is his signature there.

Mr. ATKINS: That is under date of November 2, 1904?

Mr. BEACH: I believe this has been produced by the hotel men. We offer in evidence this register, being Exhibit No. 141 and that part of it opposite to 1832.

Mr. WORTHINGTON: What hotel is it?

Mr. BEACH: The Auditorium. The answer is: "1832—E. S. Holmes, D. C."

By Mr. BEACH:

Q. Do you see his handwriting at any other point on that page?
A. Yes, sir; the one under it.
Q. Under 1832—L. L. Holmes, D. C.?
A. Yes.

Mr. BEACH: That is under date of November 2, 1904?

Q. Do you know the handwriting of Mr. Haas?
A. Yes, sir.
Q. Do you see it?
A. I do.

Mr. BEACH: On Exhibit No 142, under date of October 27, 1904, opposite 220 it appears—M. Haas—and what *O* take to be N. Y.

Mr. WORTHINGTON: N. Y. C.

Mr. BEACH: You evidently have seen it before.

Mr. WORTHINGTON: I saw it this morning when the hotel man produced it.

By Mr. BEACH:

Q. Do you see the handwriting of Mr. Haas on Exhibit No. 140?
A. I do. It is right here.

Mr. BEACH: Under date of Tuesday, November —, 1904, in Exhibit No. 140, opposite 2028 appears—"M. Haas—N. Y. C." We offer that in evidence.

By Mr. BEACH:

Q. Did you meet any one else in Chicago?
A. I met Leland, Mr. Holmes' Son.
Q. Did you meet Mr. Haas and Mr. Peckham?
A. Mr. Haas and Mr. Peckham, yes, sir.

The COURT: I do not hear much that the witness says. Of course I do not need to hear all the details of the testimony, but want to get the substance of it. We will have to have each answer read, if the witness is doing his best. You may read each answer if you will.

By Mr. BEACH:

Q. Was Mr. Peckham there?
A. Yes, sir.
Q. When did you next see Mr. Holmes after the Chicago meeting?
A. We *went* to St. Louis to the World's Fair.
Q. When you say *we* you mean whom?
A. Mr. Holmes, Mr. Peckham, Mr. Haas and Leland.
Q. Where did you stop in St. Louis?
A. We stopped at the Planters Hotel.

Q. Look at Exhibit 123 and state if you can identify the handwriting of Mr. Haas and Mr. Peckham?

59 Mr. WORTHINGTON: What is the date of that? I have forgotten it.

Mr. ATKINS: It is dated Friday, November 4, 1904.

A. Mr. and Mrs. Haas—But Mr. Haas' name does not look like his signature. Mr. Holmes' name is there in his handwriting.

Q. Read everything in the handwriting of Mr. Holmes.

A. E. S. Holmes, N. Y.—L. L. Holmes, ditto.

Q. Are you able to state in whose handwriting Mr. and Mrs. Peckham appears on this register?

A. I am not positive; but it looks like Peckham's.

Q. What is the next?

A. L. C. Van Riper.

Q. Whose writing is that?

A. I don't know; it is not mine.

Q. What is the next name that appears?

A. That is not Haas' handwriting.

Q. Was anything done in St. Louis or Chicago, or at both places, as to further operations in the cotton market?

A. No.

Q. Were any conversations had with regard to the speculations you were going to make together?

A. Yes, we talked over it frequently.

Q. With what result; what did you do.

A. We didn't do anything until along in November sometime.

Q. In November sometime, what did you do?

A. We began selling cotton along in November.

Q. How long did you continue to do that?

A. Up until the day of the December report.

Q. What did you sell; you say you sold cotton up to the time of the December report. Why did you sell?

A. Because Haas brought the report that Price was selling and that the December report would be a very bearish one—the December Government report.

Q. When did you get the advices on which you operated in December?

A. We began to sell in November.

Q. Who brought you the advices?

A. Mr. Haas.

Q. How did he bring them?

A. He brought them himself.

Q. What did he say?

A. He told me to begin selling. He came right to my office. I gave him a key to my private office, so that he could get in any time he was in town.

Q. What did he say to you about Holmes, if anything?

A. He conferred with Holmes at times. He would come down to Washington and then he would come back to New York.

Q. That was during how long a period?

A. That was in the latter part of November,—from about the middle of November to December 3rd.

Q. Do you recall when the crop report came out in that year and month?

A. It came out on December 3rd.

Q. What deals did you have in cotton during the periods you have detailed, and with whom did you deal?

A. With Hubbard Brothers in New York.

60 Q. Who are they?

A. Members of the New York Cotton Exchange and brokers.

Q. With whom else, if any one else, did you deal?

A. We dealt with L. H. Marcer.

Q. Who is he?

A. He is a member of the New York Cotton Exchange.

Q. Where?

A. He was a broker on the first floor at that time.

Q. Did you deal with any others?

A. C. G. Gates & Company.

Q. With any others?

A. We dealt with Nicholas Waterhouse & Sons, of Liverpool, England.

Q. What was the result of these operations with the brokers you have mentioned?

A. About $167,000 profit.

Q. What was done with that profit of $167,000?

Mr. WORTHINGTON: If the answer to that calls for information about the contents of checks and other writings, I object to it on the ground that the checks are the best evidence.

Mr. BAKER: I presume if he drew a check he has a right to testify that he did.

The COURT: There is no question pending, I think.

Mr. WORTHINGTON: Yes, the question was how he disposed of this $167,000. I object to it if it calls for statements of what was done in writing by checks or otherwise, on the ground that the documents should be produced or their absence accounted for.

The COURT: I think he can state how it was divided and what was done with it. The other is only the method. I think he may state the ultimate facts.

Mr. WORTHINGTON: I would like to have an exception to that.

The COURT: An exception may be noted if you want it.

By Mr. BEACH:

Q. What was done with that profit?

A. Eventually I paid Haas one-half of it and Peckham one-quarter of it.

Q. I want to know exactly how it was divided. Tell it in your own way.

A. About $57,000 was drawn and divided on the 11th or 12th of December. $10,000 was used to buy a membership on the Cotton Exchange for Peckham, and $25,000 was put in for capital of the firm of Peckham, Mercer & Company, and $75,000 was held to operate with.

Q. What did a seat on the Cotton Exchange cost?
A. It cost $10,000.
Q. What was the capital of that firm?
A. $25,000.
Q. What was the amount with which you were to operate?
A. $75,000.

Mr. LESTER: I want to object to you gentlemen talking so loud. I can hear you very much better than I can the witness.

Mr. BEACH: Then it is a good thing to have you in between us.

Mr. LESTER: Yes, but I don't want him to hear what you say between yourselves.

Mr. BEACH: Of course we had no idea of that.

61 By Mr. BEACH:

Q. You said there was a division of a certain sum about December 11th or 12th. I hand you two papers, and ask you if you can identify them, being Exhibits No. 53*b* and 53*c*?
A. Yes sir.
Q. I also hand you exhibit No. 21, and ask you if you can identify it?
A. Yes sir.
Q. When were these memoranda made, or about when?
A. These were made around the 11th of December, 1901.
Q. Where were they made, and tell us all about the meeting of December 11th or 12th?
A. These were made in my office by myself at 108 Fulton Street.
Q. Who was present and what happened?

Mr. WORTHINGTON: He said he made them in the office by himself.

The WITNESS: I said I made the memoranda myself in the presence of Holmes, Mr. Haas and Mr. Peckham.

By Mr. BEACH:

Q. Taking this memoranda, made at that time, tell us what was done there, with those three parties present?
A. Exhibit No. 53*c* is the account of Hubbard Brothers and showed a profit of $31,160. Exhibit 53*b* is a general summary of all the different accounts, and showed a profit of $166,986.62.
Q. Go on and explain what the other figures are on both papers?
A. After deducting the $110,100 which was set aside for these other purposes, left a balance of $56,886.62.
Q. Give me that again?
A. $56,886.62. In order to make it even I added $113.38 to that, which made $57,000.
Q. What did you do with that $57,000?
A. I divided it into four parts.
Q. What did you do with the parts?
A. I paid Peckham one-quarter of it, and I paid Haas one-half of it.
Q. How did you make the payment to Haas?
A. I gave him $14,250 in cash, and I gave him a check for

$24,250, which included $10,000 that he had advanced in November.

Q. Which included what?

A. $10,000 that Haas had advanced to me.

Q. When and why did he make that advance?

A. To give me confidence in the deal and to help out.

Q. When was that? Can you tell us the time when he gave you this $10,000?

A. About November 10th.

Q. Where?

A. At my office, 108 Fulton Street.

Q. How did he give it to you? In what form?

A. He gave me a check.

Q. On what bank?

A. On the 28th. Street branch of the Corn Exchange Bank.

Q. Look at Exhibit 21. Whose handwriting appears on the face of that?

A. It is mine.

Q. And on the back?

62 A. Mr. Haas.

Mr. WORTHINGTON: Is that the check for $24,250.?

Mr. BEACH: Yes; we offer this in evidence.

Mr. WORTHINGTON: I do not care to see it.

Mr. BEACH: This check is as follows:

"No. XXX. HOBOKEN, N. J., *Dec. 12th*, 1904.

"The Second National Bank of Hoboken, Through the New York Clearing House Association.

"Pay to M. Haas or order Twenty-four thousand two hundred fifty "dollars $24250.00.

LEWIS C. VAN RIPER."

(Stamped as follows:)

"Certified, payable at Dec. 15 (?) 1904, The National Park Bank of New York. ——— ———, Teller.

"The Second National Bank, Dec. 16, 1904, Hoboken, N. J."

Endorsed as follows:

"M. Haas"

"Received payment, Through the New York Clearing House, December 13, 1904, endorsements guaranteed, The Corn Exchange Bank of New York, Frederick T. Martin, Cashier."

By Mr. BEACH:

Q. Why did you give Haas a check for part and cash for another part?

A. He asked me to have a quarter of it in cash.

Q. What did he do with the cash, if you know?

Mr. WORTHINGTON: Find out first if he knows.

By Mr. BEACH:

Q. I say, if you know. Do you know?

A. He paid it to Mr. Holmes.
Q. When and where?
A. Right in the office at that time.

Mr. BEACH: I offer in evidence these memoranda, Exhibit 53*b* and 53*c*.

Mr. BAKER: We will have them copied in the record, and we would like to show them to the jury instead of reading them. They are almost unintelligible if they are read.

(The papers referred to are as follows:)

EXHIBIT 53*b*.

"Liverpool
486.90

1714.12	8348.62
486.65	19466.00
4000.00	54342.00
H. B.	31160.00
N.	53670.
	166986.62
	110100.
	56886.62
	113.38
	57000.00

63 100000
101000
110100.

57000
56886.62
113.38
Cables due Van R. 100.
213.38

EXHIBIT 53*c*.

Nov. 22	Cash	2,000
25	"	1,400
28	"	1,510
29	"	8,000
		22,910

Rec'd
Nov. 30— 15,000

Dec.	7	25,000
	9	14,070
		64,070
		22,910
Profit		31,160

H. BROS."

By Mr. BEACH:

Q. I think you said Mr. L. H. Mercer was a broker in New York?
A. Yes sir.
Q. What kind of a broker?
A. He was a member of the New York Cotton Exchange.
Q. And you refferred to the firm of Peckham, Mercer & Company. I wish in your own way you would tell how that firm was formed, when, what its history was, and when it was dissolved, if ever.
A. Mr. Peckham entered into an agreement with Mr. Mercer, I think, on December 13.
Mr. WORTHINGTON: Were you present?
By Mr. BEACH: Mr. Worthington wants to know if you were present.
A. Yes.
Q. Go on and tell it in your own way.
64 Mr. WORTHINGTON: What date did he say?
Mr. BEACH: December 13.

By Mr. BEACH:

Q. What year, Mr. Van Riper?
A. 1904. Mr. Peckham agreed to furnish $25,000 capital, and was to receive four-fifths of the profits, and to get his capital paid back out of the first profits.

By Mr. WORTHINGTON:

Q. Was that agreement in writing?
A. Yes sir.

Mr. BEACH: I have here the articles of copartnership, if your Honor please.
Mr. WORTHINGTON: We do not care to make any point about the subscribing witnesses not being called.

By Mr. BEACH:

—. Do you know the handwriting of Mr. Mercer and Mr. Peckham?
A. Yes sir.

Mr. BEACH: We offer this in evidence.
Mr. WORTHINGTON: I suppose it will be connected with us in some way?
Mr. BEACH: I think so. I will read it.

(The agreement referred to was read in evidence by Mr. Beach as follows:)

This agreement, made this thirteenth day of December, in the year one thousand nine hundred and four, between Frederick A. Peckham and Lewis H. Mercer.

1. Witnesseth, that the said parties above named have agreed to be and become partners in business under the firm name of Mercer & Company, in the commission and brokerage business, for the buying and selling of stocks, bonds, cotton, grain and other commodities dealt in on the various exchanges in the City of New York, and for the transaction of all business in connection therewith, their co-partnership to commence on the day of the date hereof and to continue for five years thereafter, and to that end and purpose the said Frederick A. Peckham has contributed to the said co-partnership for working capital, the sum of twenty-five thousand dollars in cash, to be used and employed in common between the said co-partners for the support and management of the said business to their mutual benefit and advantage.

2. And it is agreed by and between the parties to these presents that at all times during the continuance of the co-partnership hereby formed the said Frederick A. Peckham and the said Lewis H. Mercer shall devote their whole time and attention to the business of said co-partnership, and do their and each of their best endeavors and to the utmost of their skill and power exert themselves for the joint interest, profit, benefit and advantage of said co-partnership.

3. And it is agreed by and between said parties that there shall be had and kept at all times during the continuance of their co-partnership perfect, just and true books of account wherein there shall appear as well all moneys received, paid, laid out and expended in and about the said business as also all transactions by way of pur-
65 chase, or sale had by reason or on account of their said business, and all matters and things whatsoever to the said business and the management thereof in anywise belonging, which said books shall be used in common between the said co-partners so that neither of them may have access thereto without any interruption or hinderance of the others.

4. And it is agreed that the said co-partners shall and will at all times during the said co-partnership bear, pay and discharge equally between them in proportion to their respective interests, all rents and other expenses that may be required for the support and management of the said business, and that all gains, profit and increase that shall come, grow or arise from or by means of their said business, shall be divided as follows: Frederick A. Peckham to receive four-fifths, and Lewis H. Mercer one-fifth, and that all loss that shall happen to their said joint business shall be borne and paid by them in the same proportions. It is, however, understood that the amount of money put in for working capital shall be first paid back to the said Frederick A. Peckham out of all net profits accruing, before there shall be any division, and the said Frederick A. Peckham agreed to make further advances if needed, to keep the working capital of the firm not less than twenty-five thousand dol-

lars and to hold said Lewis H. Mercer harmless from any personal loss in connection with said business.

5. It is further agreed that said Frederick A. Peckham and said Lewis H. Mercer shall each receive a salary of one hundred dollars per week during pendency of this agreement, said salary to be charged to expense account, and neither partner hereto shall take any further sum for his own support and use without the consent of the other, and the said partners shall not at any time withdraw from the said co-partnership more than their respective share of the profits of the business then earned, and no profits shall be divided until the amount advanced by said Frederick A. Peckham shall have been repaid and a sufficient amount remaining to make the working capital not less than twenty-five thousand dollars.

6. And it is agreed that on account of the standing of the business shall be taken, and an account between the partners shall be settled as often as once a year, and as much oftener as either of the parties may desire, and in writing request.

7. None of the parties hereto shall subscribe any bond, sign or endorse any note or bond, accept, sign or endorse any draft or bill of exchange, or assume any other liability, verbal or written, either in his own name or in name of the firm, for the accommodation of any other person or persons whatsoever, or on his own account have any dealings in the various exchanges without the consent in writing of the other party hereto, nor shall either party lend any of the funds of the co-partnership without such consent of the other party hereto.

8. And it is agreed that at the end of the term or sooner determination of their co-partnership, the said co-partners each of the
66 parties to the other, shall and will make a just true and final account of all things relating to their said business, and in all things truly adjust the same, and all property, goods, chattels and assets of the co-partnership shall after the moneys advanced by Peckham are repaid be divided equally between said partners in proportion to their respective interests.

9. And it is agreed that at any time during the continuance of said co-partnership, or at the end of the term or other sooner determination of their co-partnership, either of said co-partners, may take in writing an offer to the other party of the price at which such party will buy the interests of the other co-partner, or sell to the other co-partner his interest; said offer to be made in proportion to the interest of each, that is to say, in case said Frederick A. Peckham offers to buy the interest of Lewis H. Mercer, the offer made to Lewis H. Mercer to be in proportion to his interest, with the understanding that the said Peckham will accept from said Mercer an amount equivalent to four times the amount offered by him, and such other co-partner shall thereupon within five days signify his election whether he or they will buy or sell at that price, and if he fails to do so by notice in writing within that time, the party making such offer, may within five days buy or sell at his election according to his own offer, and the parties hereto agree on tender of the price stated in such offer to forthwith do and perform all things and execute all bills of sale or other papers necessary to carry out the

terms thereof, and to secure to the other the rights accruing under such offer.

10. Upon and after the expiration of said term, or other sooner determination of the said partnership, except it be terminated by reason of violation or default of either of the said co-partners, the partner returning shall not within one year thereafter, either alone or jointly with, or as agent for any person either directly or indirectly set up, exercise or carry on the said business of buying and selling stocks, bonds, cotton grain and other commodities within the limits of the City of New York aforesaid; and shall not set up make or encourage any opposition to the said business thereafter to be carried on by the party continuing said business or his representatives or assigns *nor*— nor to do anything to the prejudice thereof; and shall not divulge to any person any of the secrets, accounts or transactions of, or relating to the said co-partnership.

11. It is further agreed that in the case of the death of either partner said deceased partner's heirs or assigns may have the right to buy the interest of said living partner or sell the interest of said deceased partner, in accordance with the terms contained in paragraph 9, providing for either partner to purchase the interest of the other.

12. And the said parties hereto agree that the partner continuing the said business shall have the right during the one year above limited to continue to use the firm name of Mercer & Company, if so desired by him, or them and that said name shall not be used either directly or indirectly in such business or business akin thereto, nor the sole and exclusive use of all such name be
67 interfered with by such retiring partner.

13. It is further agreed that all checks, drafts and moneys belonging to or in the hands of said firm, shall be deposited in some bank or banks to be mutually agreed upon by said partners, and that all checks drawn against said bank accounts shall be signed Mercer & Company by said Lewis H. Mercer and countersigned by F. A. Peckham, and that no money shall be drawn from any bank without the signature of both parties as above.

14. And it is further agreed that said Frederick A. Peckham may, at his option, have the privilege to change the firm name from Mercer & Company to that of Peckham, Mercer & Company and that said Lewis H. Mercer gives his consent to such change at any time desired.

In witness whereof the said — hereto have hereunto set their hands and seals the day and year first above written.

FREDERICK A. PECKHAM. [L. S.]
LEWIS H. MERCER. [L. S.]

Witness:
L. E. GOODBERLET.

By Mr. BEACH:

Q. I hand you three exhibits, numbers respectively, 48, 51, and 52. You have testified as I understand it that you know the handwriting of Mr Peckham, Mr. Haas and Mr. Holmes. I hand you

these three exhibits and ask you to say whether the names of the parties are signed thereto. Exhibit 48 is what?

A. 48 is signed by Frederick A. Peckham and myself, and witnessed by Mr. Haas.

Q. Now, 51 and 52.

Mr. WORTHINGTON: What about 51.

Mr. BEACH: We have not come to that yet. He says 48 was signed by Peckham and himself and Haas.

Mr. ADKINS: In the presence of Mr. Haas.

By Mr. BEACH:

Q. What about 52?

A. 52 is signed by Peckham and Haas and witnessed by Haas and myself. Haas signed it twice.

Mr. BAKER: I did not understand you.

A. Haas signed this one twice.

By Mr. BEACH:

Q. That is 52?

A. And I signed as a witness. Haas signed again here (indicating).

Q. Haas signed again on the toot of 52?

A. Yes sir.

Mr. BEACH: We offer these two exhibits in evidence.

Mr. WORTHINGTON: What about 51?

Mr. BEACH: We have not got to 51.

68 Mr. WORTHINGTON: I understand these are to be connected with Mr. Holmes in some way?

Mr. BEACH: Yes sir.

Mr. WORTHINGTON: Upon that statement they are competent under your Honor's ruling.

Mr. BEACH: Mr. Baker, very properly, if your Honor pleases, says to me that we do not know that we can say these two papers are connected with Mr. Holmes. I would like to state to the Court, in your hearing, what the connection is.

Mr. WORTHINGTON: Go ahead. I do not care to hear it.

By Mr. BEACH:

Q. Will you look at the exhibit before you, 51, and say whose handwriting appears on that and where the handwriting occurs?

A. Edwin S. Holmes, Jr.'s handwriting in the body of it, and M. Haas' signature, witnessed by myself.

Mr. WORTHINGTON: Whose signature?

A. Mr. Haas.

Mr. WORTHINGTON: And is not signed by Mr. Holmes, I understand?

Mr. ADKINS: No; it is not signed by Moses Haas.

Mr. BEACH: We offer these three exhibits in connection with the articles of copartnership of Peckham, Mercer & Co.

Mr. WORTHINGTON: Are you going to account for the mutilation of this paper, Mr. Beach?

Mr. BEACH: Yes.

(The three exhibits referred to were thereupon read in evidence by Mr. Adkins, as follows:)

EXHIBIT 52.

"Whereas, Frederick A. Peckham and Lewis H. Mercer, have entered into a certain copartnership agreement, bearing date of December 13, 1904, and

"Whereas, M. Haas has contributed Twelve Thousand Five Hundred Dollars ($12,500) in cash towards the Twenty-five Thousand Dollars furnished by Frederick A. Peckham as capital for the firm of Mercer & Company.

"It is hereby agreed between Frederick A. Peckham and M. Haas that said M. Haas is entitled to receive one-half of all profits divided until the sum of Twelve Thousand Five Hundred Dollars ($12,500) shall have been received, after which said M. Haas shall be entitled to receive two-fifths of all future net profits or divisions that may be made from either of the profits or the assets of said firm of Mercer & Company, or any continuation of said firm or business.

FREDERICK A. PECKHAM.
M. HAAS.

In the presence of
M. HAAS.
LEWIS C. VAN RIPER.

Dec. 31, 1904.

For value received I hereby transfer my interest as above
69 stated to L. C. Van Riper.

M. HAAS.

EXHIBIT 51.

"Trust Agreement."

"I hereby certify that I have this day entered into an agreement with one Frederick A. Peckham, wherein I have contributed to said Peckham the sum of Twelve Thousand Five Hundred Dollars ($12,500) towards the capital to be furnished by him for certain co-partnership agreement which he has entered into under date of December 13, 1904, and that I hold from said Peckham certain agreements entitling me to the return of said twelve thousand five hundred dollars ($12,500) from the first profits accruing, and to further interest in the profits of said business as equivalent to two-fifths of the total net profits.

"Now therefore this agreement witnesseth:

"That Edwin S. Holmes, Jr., has contributed one-half of said Twelve Thousand Five Hundred Dollars ($12,500) and is to receive

one-half of all profits which I myself may receive from time to time on account of said agreement with Peckham.

"M. HAAS.

In presence of
"LEWIS C. VAN RIPER.

EXHIBIT 48.

"Whereas, Frederick A. Peckham and Lewis H. Mercer have entered into a certain co-partnership agreement, bearing date of December 13, 1904, and

"Whereas, L. C. Van Riper has contributed Six Thousand Two Hundred Fifty Dollars ($6,250) in cash towards the Twenty five Thousand Dollars furnished by Frederick A. Peckham as capital for the firm of Mercer & Company.

"It is hereby agreed between Frederick A. Peckham and L. C. Van Riper that said L. C. Van Riper is entitled to receive
70 one-fourth of all profits divided until the sum of Six Thousand Two Hundred Fifty Dollars ($6,250) shall have been received, after which said L. C. Van Riper shall be entitled to receive one-fifth of all future net profits or divisions that may be made from either the profits or the assets of said firm or Mercer & Company, or any continuation of said firm or business.

"FREDERICK A. PECKHAM.
"LEWIS C. VAN RIPER.

In the presence of
M. HAAS.

By Mr. BEACH:

Q. Mr. Van Riper, what was the object of this firm being organized?

Mr. WORTHINGTON: I object to that your Honor. The firm paper states what it was organized for.

Mr. BEACH: I think we may say that we offer to prove in that connection, arrangements——

Mr. WORTHINGTON: Mr. Beach, do you wish to prove that that was merely pretense, and there was some other real motive?

Mr. BEACH: Yes.

Mr. WORTHINGTON: Then it is competent, of course. I would rather you would let the witness state what it was.

Mr. BEACH: I will do whatever you want me to do.

Mr. BEACH:

Q. How did this firm come to be organized?

Mr. WORTHINGTON: I suppose Mr. Holmes is to be connected with this?

Mr. BEACH: Certainly; he is connected with it by this declaration of trust.

Mr. WORTHINGTON: I say he is to be connected with this pretense. I understand you to say that the paper does not really show what the

object was, but that there was some other object, and that you will show that Mr. Holmes was cognizant of some other object.

Mr. BEACH: No. Perhaps if you will let me state what I want to do we will not have so much difficulty about it. I offered the articles of copartnership between Mercer and Peckham. Now I want to show that while that apparently was the arrangement between Peckham and Mercer, there was another arrangement between Holmes, Haas, Peckham and Van Riper, which does not appear on the fact of the copartnership articles, and the connection of Mr. Holmes with it, I think, will appear as we progress.

The COURT: That is all that Mr. Worthington wanted to be assured of.

Mr. WORTHINGTON: I only wanted to be assured that you
71 were going to show that Mr. Holmes had something to do with it.

The COURT: On that statement you may go on.

By Mr. BEACH:

Q. For what purpose was this copartnership formed, Mr. Van Riper?

A. Merely for convenience, to enable us to operate to better advantage.

Q. Whom do you mean by "us"?

A. Myself and Haas.

Q. And who else, if any one?

A. Haas was the only one I was supposed to know in the deal.

Q. Who else did you know?

A. Mr. Holmes had an interest, and Mr. Peckham.

Q. Did you have any conversation with Mr. Holmes about this matter?

A. Yes; we all talked it over.

Q. Whom do you mean by we?

A. The four of us, Mr. Holmes, Mr. Haas, and Mr. Peckham.

Mr. BAKER: I cannot hear what you say.

A. Mr. Holmes, Mr. Hass, Mr. Peckham and myself.

By Mr. BEACH:

Q. Where did you discuss it?

A. We talked it over on our trip to the World's Fair, and we met at Mr. Peckham's apartment at the Imperial Hotel, where these papers were signed.

Q. From what source did the money for Mr. Peckham's seat come?

A. It came from this profit in cotton.

Q. And the $25,000 capital for the firm?

A. From the profits on this cotton deal.

Q. And you spoke of some $75,000 on which it was intended to operate. Where did that come from?

A. Part of the profits.

Q. Was this money actually put up?

A. Yes sir.

Mr. WORTHINGTON: You say "this money". Do you mean——

Mr. BEACH: I think it was the $10,100 from this profit.

Q. Who handled the $75,000? How was it put up?
A. I retained that $75,000 until later in the month?
Q. What became of it later in the month?
A. It was paid over to Haas and to Peckham.
Q. Paid over to Haas and Peck*ahma?*
A. Yes sir.
Q. Was any operation conducted on that $75,000.
A. Yes sir.
Q. In what?
A. We sold cotton later in the month, in December, and made a profit of some $43,000.
Q. In what?
A. Cotton.
Q. Was that on any report?
A. It was on Mr. Haas's information, that——
Q. What information did he have or purport to have.
A. He *ca*lined to have some source to know what the ginners' report was to be.
Q. What is the ginners' report?
A. It is a report which is issued by the census bureau from time to time.
72 Q. What was the profit on that deal, did you say, roughly?
A. About $43,000.
Q. When were these profits divided on this ginners' deal?
A. The latter part of December.
Q. Of what year?
A. 1904.
Q. Where?
A. At the Breslin Hotel, and at my office.
Q. Who was there at the Breslin Hotel?
A. Mr. Holmes, Mr. Haas and Mr. Peckham.
Q. Who were at your office? You say something was done at your office?
A. One-quarter of the profits from the ginners' deal was taken up at the Breslin Hotel and given to Mr. Haas, and by Mr. Haas given to Mr. Holmes who was sick in bed there.
Q. Who was sick?
A. Mr. Holmes.
Q. What took place there?
Mr. WORTHINGTON: Were you there, Mr. Van Riper?
A. Yes sir; I was there. Well, after Mr. Haas gave Mr. Holmes the money, he put it under his pillow, and he turned around to Mr. Peckham and said: "Freddie, we have made up our minds we want to draw that other money down, too.
Mr. BEACH: We what?
A. Want to draw the rest of this money down too.

By Mr. BEACH:

Q. "We want to draw the rest of the money down?"
A. Yes sir; and Mr. Peckham said, "Well, if you do you will practically put me out of business."

Mr. WORTHINGTON: Who said that?

A. Mr. Peckham. There was some little argument there between all of us, and I told them if they wanted to, they could take it down; it was their money, but I didn't think it was fair to expect me to furnish all of the money and for them to draw down all of the profits every time. So the next day—Mr. Holmes was able to get out the next day and they all came down to the office, and I drew a quarter of the money in cash, gave that to Mr. Haas in the office, and gave him a check for $2500, which was one-quarter of the cost of membership.

By Mr. BEACH:

Q. What membership do you mean, Mr. Van Riper.

A. That had been bought by Peckham on the Cotton Exchange.

Q. Go on, Mr. Van Riper, and tell anything else that happened on this occasion.

A. Mr. Haas then gave Mr. Holmes the cash that I paid him and said that he would get the check cashed and give him the currency on that.

Q. Go on.

A. Then the following day or the day after I gave Mr. Haas a check for the other quarter, for his share of the profits on the ginners' report, and for a quarter of the membership, which amounted to about $38,000. I took an assignment of half his interest in the firm of Peckham & Mercer.

73 Q. I now hand you exhibits numbered 53A, 53B, 22 and 23. I will take them in that order. What is the first exhibit? In whose handwriting is it?

A. Exhibit 22 is a check to Haas, signed by me for $2525.

Q. What is the next?

A. Which was given him on December 30th?

Q. For what?

A. For one-quarter of the cost of the membership.

Q. What is the other check?

A. The other is a check for $38,292.90.

Q. That is for what?

A. Which represents a quarter of the hundred thousand dollars, the quarter of the profits on the ginners' report, and a quarter of the membership. When I gave him that check, he assigned his interest in the firm to me, and turned over this trust agreement, which was torn up and thrown in the waste basket.

Mr. WORTHINGTON: What check do you refer to: the $38,000 check? Do you mean when you gave him that?

A. Yes sir.

Mr. BEACH: We offer in evidence this check, exhibit 23, it is as follows:

"23" (A check).

"No. A 1791. HOBOKEN, N. J., *Dec. 31st*, 1904.

The Second National Bank of Hoboken, Through the New York Clearing House Association.

Pay to the order of H. Haas Thirty-eight Thousand Two hundred ninety-two & 90/100 Dollars.
$38,292.90 (Red ink $38292.90)

LEWIS C. VAN RIPER."

(Endorsed:) "Mr. Haas."
(Perforated:) "Paid."
("Stamped:) "Received payment through the New York Clearing House Dec. 31 1904 Endorsements Guaranteed The Corn Exchange Bank of N. Y. Frederick T. Martin, Cashier, 28th St."

74 By Mr. BEACH:

Q. This is your check (referring to Exhibit 23). Is that Mr. Haas' endorsement?
A. Yes, sir.

Mr. BEACH: The second check is as follows:

"22"

"No. A 1788. HOBOKEN, N. J., *Dec. 30th*, 1904.

The Second National Bank, Hoboken, Through New York Clearing House Association.

Pay to the order of M Haas Twenty-five Hundred twenty-five & 00/100 Dollars $2525.00.

LEWIS C. VAN RIPER.

(Stamped:) "Not over Three Thousand $3000.
(Stamped:) "The Second National Bank Hoboken Dec. 31, 1904.
(Endorsed:) "M. Haas."
(Perforated:) "Paid."
(Stamped:) "Received payment through New York Clearing House Dec 30 1904 Endorsements Guaranteed The Corn Exchange Bank of N. Y., Frederick T. Martin, Cashier."

By Mr. BEACH:

Q. That is your signature (referring to Exhibit 22) Is that his endorsement?
A. Yes sir.
Q. Now, Exhibits 53 A and 53 B. What is Exhibit No. 53 A?
A. That is a memorandum I made of the trades on the ginners' report. It shows a profit of $43,285 from which I deducted the $113 that I had added to the figures prior on *on* the December

11th settlement, also $10.) for cables. After deducting $213.38, it left $43,071.62, which was divided in four parts and $10,767.90 was paid to Mr. Holmes in the Breslin Hotel, and that amount was paid to Haas in this thirty-eight thousand dollar check.

Q. How was it paid to Mr. Holmes?

A. In currency, by Mr. Haas.

Q. I wish you would take that check of December 30, No. 23, and from your memoranda tell us just what that check was given for, because I haven't it very clear in my own mind.

A. That presents one-half of the $75,000 which I held to operate with, one-half of the $25,000 capital that was put in Peckham, Mercer & Company, one quarter of the membership, which was $2525, and one-quarter of the profits on the Ginners' report, which was $10,767.90.

75 By Mr. WORTHINGTON:

Q. You said half of the $75,000. Did you say it represented one-half of the $75,000?

A. One-quarter of the $75,000.

Q. Did you mean one-half of the $25,000?

A. One-quarter of the $25,000.

Q. You said one-half.

A. One quarter was paid the day before. I got mixed on that One-quarter of the $25,000, one-quarter of the $15,000, and one-quarter of the membership and one-quarter of the profits on the ginners' report.

By Mr. BEACH:

Q. Just how was Mr. Holmes paid? In what form was he paid?

A. He was paid $10,767.90 at the Breslin Hotel, the night on the 29th. On the 30th he was paid $25,000 in currency; that is, it was turned over to Haas, two $10,000 bills and a $5,000 bill, and Mr. Haas paid that to Mr. Holmes.

Q. I did not hear you.

A. Mr. Haas turned that over to Mr. Holmes. Then that $2525 check, which was made payable to Haas, and he said he would get it cashed.

Q. What check have you there?

A. That is exhibit 22.

Q. Is that the check you referred to?

A. Yes sir.

Mr. BEACH. If your Honor please, I would like to suspend at this point.

The COURT. I am willing to sit a little later if you want to. I kept you waiting a while this morning unnecessarily.

Mr. BEACH. I shall have to ask your Honor to indulge me a little, as I am somewhat under the weather myself. We might sit longer a little later in the week, if that will be agreeable to the jury.

The Court thereupon adjourned until Tuesday, June 18, 1907, at 10 o'clock A. M.

(The foregoing is copied from Book 8 of the stenographer's minutes, pages 839 to 946.)

76 THE UNITED STATES
vs.
EDWIN S. HOLMES, JR.

Stenographer's Minutes, Book 9, Pages 947 to 1083.

77 *Testimony of L. C. Van Riper.*

(Book 9, Pages 947-993, Direct.)

L. C. VAN RIPER resumes the stand for further direct examination.

By Mr. BEACH:

Q. Mr. Van Riper, I want to address your attention this morning to the profits on the December 3rd Cotton Crop Report. I hand you exhibits 53 B and 53 C, already in evidence. I understood you to say yesterday that the amount of those profits, in round numbers, was $167,000. Through what houses or cotton brokers——

A. Before I answer that question I would like permission to make a slight modification in an answer I made yesterday. I said in my testimony that the money paid Haas on December 30th was in two $10,000 and one $5,000 bill; but after thinking it over I am not positive about the *denominations* of that money at that time. I had that confused with another $25,000 item that took place early in the month.

Q. What was the other $25,000 item that took place early in the month?

A. It was $25,000 that was drawn around the 11th of December; but this money that was drawn on the 30th was drawn by Peckham from the firm of Peckham, Mercer & Company, and charged to my account. It did not pass through my hands at all; but it was paid to Haas, in my office.

Q. Going back to the earlier transaction, and the payment of this $25,000, I wish you would state how that was paid?

A. That was paid to Peckham in $25,000 items. It was given to Peckham early in the month, one was, and placed to the credit of the firm, and the other was to place to his own personal credit.

Q. Going back to the question I was starting out with this morning, I would like to know the houses through which you dealt, in making this profit of, in round numbers, $167,000 on the Cotton Crop Report of December 3rd.

Mr. WORTHINGTON: I object to that question on the ground that the witness has not stated that he made the profit on the Cotton Report of December 3rd.

Mr. BEACH: I so understood the testimony.

Mr. BAKER: He testified to that yesterday.

The COURT: You can ask him, if there is any doubt about it.

By Mr. BEACH:

Q. What profit did you make on the Cotton Crop Report of De-

cember 3rd, 1904, on the operations up to the Ginners'
78 Report?

A. The amount settled for was $166,986.62.

Q. Through what house or through what cotton brokers was that operation conducted, and give their names?

A. Hubbard Brothers, of New York.

Q. How much from Hubbard Brothers?

A. $31,160.

Mr. WORTHINGTON: What are you reading from, may I ask?

A. From Exhibit 53 B.

By Mr. BEACH:

Q. What other house or what other broker?

A. L. H. Mercer—$53,670.

Mr. WORTHINGTON: Are you reading from the same exhibit.

A. Yes, sir.

By Mr. BEACH:

Q. Where did you make the rest?

A. Nicholas Waterhouse & Sons, of Liverpool.

Q. How much?

A. It is figured out in three items here.

Q. Give us the aggregate. The first was $8,348.62.

—, ——.

Q. What is the next item?

A. $19,466; and $54,342.

Q. Mr. Van Riper, are you able to say how the three items of the Waterhouse accounts were paid to you?

A. It was cabled through separate times—three different times.

Q. Were the cables directed to you?

A. It was cabled through the banks.

Q. Are you able to state through what banks this money came?

A. The $19,466 item came to the Park National Bank in New York. The $54,342 item came to the New York National Exchange Bank.

Q. And the others?

A. The $8,348 item, I think, came through the Park National Bank or the Second National Bank of Hoboken. I am not positive; but I know it was deposited to my credit.

Q. Coming now to the payment from Hubbard Brothers, how were those payments, if you can recall?

A. By check or checks.

Q. I hand you some papers which are marked Exhibit No. 213.

Mr. WORTHINGTON: May I interrupt you to ask if you are through with the exhibits the witness has been read-
79 ing?

Mr. BEACH: Yes; do you want to look at them?

Mr. WORTHINGTON: When you are through with them I would like to look at them.

By Mr. BEACH:

Q. I hand you papers which are marked Exhibit 213. Please state what they are?

A. Statements from Hubbard Brothers.

Q. I hand you Exhibits Nos. 236 and 237, and 238, and ask you to state what they are?

A. They are checks from Hubbard Brothers to myself.

Q. With those exhibits before you, will you tell me, if you can, how Hubbard paid you?

A. He paid me in checks.

Q. In what amounts and at what time?

A. November 30th—$15,000.

Q. What number exhibits are you reading from now?

A. Exhibit No. 237, 236—December 7th, $25,000. 238—December 9th, $14,070.

Q. How much of those three checks was profit?

A. $31,160.

Q. What was the other?

A. I had paid Hubbard Brothers, on account of margin, $22,910.

Q. When did you pay that $22,910, if you know?

A. I cannot tell from memory. It was at different times.

Mr. WORTHINGTON: You have the books of Hubbard Brothers here to show these operations, have you now?

Mr. ADKINS: Do not these statements show it.

Mr. BEACH: I offer these exhibits in evidence.

Mr. WORTHINGTON: I object to them unless the books from which they are taken are to be produced. These are statements of accounts from the books of Hubbard Brothers which the witness says purport to show his dealings with the firm of Hubbard Brothers. I do not suppose they would be admissible in evidence, unless the books are produced.

The COURT: Do I understand that you want to treat them like the books?

Mr. WORTHINGTON: No; I am informed that the books are here and we can see whether the memorandum is correct.

80 Mr. BEACH: If your Honor please, I understand that these are the statements furnished to the witness by Hubbard Brothers, and the checks in settlement. I asked the witness how much he got from Hubbard Brothers, and in what form. I am offering these statements and checks, which he identifies.

Mr. WORTHINGTON: I have no objection to their going in as accounts that were rendered to him; but it does not necessarily prove that the transactions were what they represent them to be.

The COURT: The books do not prove that either, as far as that is concerned. The jury will understand that they are mere statements from the books.

Exhibits Nos. 236, 237, and 238 are in the words and figures following, to-wit:

Account Current. (213)

NEW YORK, *Nov.* 26, 1904.

Mr. L. C. Van Riper, 108 Fulton Street, New York, in account with Hubbard Brothers & Co., Coffee Exchange Building.

		Dr.	Cr.
Nov. 22.	Cash		2000 cash
			1400 cash
	Ac/s 7399		1090
			4490

(Admitted.)

"Account current.

NEW YORK, 30, 11, 1904.

Mr. L. C. Van Riper, in Account with Hubbard Bros. & Co., Coffee Exchange Building.

		Dr.	Cr.
Nov. 26.	Balance		4490 Cash
28.	Cash		1510 Cash
29.			800
30.	Ac/s 75381 39		8860
30.	Cash	15000	
	Balance	7260	
		22260	22260
	Balance		7260

81 Account Current.

NEW YORK, 9, 12, 1904.

Mr. L. C. Van Riper, in Account with Hubbard Bros. & Co., Coffee Exchange Building.

		Dr.	Cr.
Dec. 1.	Balance		7260
1.	Ac/s 7588		5785
7.	7844		4100
	7853		11925
8.	Cash		10000
Dec. 7.	Cash	25000	
9.		14070	
		39070	39070

Cash paid in, 22910
Cash Rec'd Nov. 30, 15000

Dec.	7,	25000
	9,	14070
		54070
		22910
		31160.00

82 No. 7399. 179.

Account Sales of 1900 *Bales of Cotton, Bought and Sold by Hubbard Bros. & Co. for Account L. C. Van Riper, for delivery in March.*

Subject to the Rules of the N. Y. Cotton Exchange.

Bought.				Sold.			
	Bales.				Bales.		
11 26.	300	947	2841	11 22.	500	974	4870
	600	948	5688		500	973	4865
	1000	947	9470	23.	100		952
			17999		100		951
				25.	700	948	6636
							18274
			275				
					Gain		1375
			Charges				
Brokerage		15				285	
Telegrams							
			Credited			1090.	

E. E.

New York, 26. 11. 1904.

HUBBARD BROS. & CO.,
Per O.

83 No. 7539. 179.

Account Sales of 2000 *Bales of Cotton, Bought and Sold by Hubbard Bros. & Co. for Account Van Riper, for Delivery in May.*

Subject to the Rules of the N. Y. Cotton Exchange.

Bought.			Sold.			
	Bales.			Bales.		
11 30.	926	18520	11 28.	10	974	9740
				5	964	4820
				5	963	4815
						19375

855 Profit 4275

Charges.

Brokerage, 300
Telegrams

3975

Credited.

E. E.
New York, 11/30, 1904.

HUBBARD BROS. & CO.,
Per G.

84 No. 7538. 179

Account Sales of 5000 Bales of Cotton, Bought and Sold by Hubbard Bros. & Co. for Account of L. C. Van Riper, for Delivery in M'ch.

Subject to the Rules of the N. Y. Cotton Exchange.

Bought.				Sold.				
11 30	20 Bales	913	18260	11 28	10	Bales	964	9640
	20	912	18240		29	7	Bales	931	6517
	10	908	9080		3		930	2790
			45580		10		928	9280
					10		919	9190
					10		917	9170
								46587
			1007	Profit				5035

Charges.

Brokerage 750
Telegrams.

4285

Credited.

E. E.

New York 11 30, 1904.

HUBBARD BROS. & CO.,
Per G.

85 No. 7588. 179.

Account Sales of 3000 *Bales of Cotton, Bought and Sold by Hubbard Bros. & Co. for Account for L. C. Van Riper, for Delivery in M'ch.*

Subject to the Rules of the N. Y. Cotton Exchange.

Bought.					Sold.		
12/1	3 Bales	879	2637	11/30	5 Bales	922	4610
	27	878	23706		10	920	9200
					5	920	4600
			26343				
					10	918	9180
							27590
			1247		Profit		6235

Charges.

Brokerage,	450
	5785

Credited.

E. E.

New York 12/1, 1904.

HUBBARD BROS. & CO.,
Per G.

86 No. 7844. 179

Account Sales of 1000 *Bales of Cotton, Bought and Sold by Hubbard Bros. & Co. for Account of L. C. Van Riper for Delivery in M'ch.*

Subject to the Rules of the N. Y. Cotton Exchange.

Bought. Bales.				Sold. Bales.		
12/7	783	7830	12/1	10	868	8680
		850	Profit			4250

Charges.

Brokerage,	150
Telegrams,	
	4100

Credited.

E. E.

New York 12 7, 1904.

HUBBARD BROS. & CO.,
Per G.

87 No. 7853. 179

Account Sales of 3000 *Bales of Cotton, Bought and Sold by Hubbard Bros. & Co., for Account of L. C. Van Riper, for Delivery in March.*

Subject to the Rules of the N. Y. Cotton Exchange.

Bought.	Bales.			Sold.	Bales.	
12 7	15	785	11775	12 1 30	868	26040
	15	786	11790			
			23565			
			2475	Profit		12375

Charges.

Brokerage,	3000	15	450	450
Telegrams,				
				11925

Credited.

E. E.

New York 12 7, 1904.

HUBBARD BROS. & CO.,
Per G.

88 (Admitted.) (237)

No. 20707. NEW YORK, *Nov.* 30, 1904.

The Bank of New York, National Banking Association.

Pay to the order of L. C. Van Riper Fifteen thousand Dollars $15000.00.

HUBBARD BROS. AND CO.

(Hubbard Bros. & Co.)

(Endorsed on back:)

Pay to 2nd National Bank of Hoboken,
Lewis C. Van Riper.

Endorsement Guaranteed
The Second National Bank
of Hoboken.

Received Payment,
Through New York Clearing House,
Dec. 1, 1904.
Second Nat. Bank,
Hoboken, N. J.

89 (Admitted.) (236)

No. 9152. NEW YORK, *Dec.* 7, 1904.

The Corn Exchange Bank.

Pay to the order of L. C. Van Riper Twenty-five thousand Dollars.
$25000.00.

HUBBARD BROS. AND CO.

(Hubbard Bros. & Co.)

(Endorsed on back:)

Pay to order of
Second National Bank
Hoboken, N. J.
Lewis C. Van Riper.

Received Payment,
Through New York Clearing House,
Dec. 9, 1904.
Second Nat. Bank,
Hoboken, N. J.

90 (Admitted.) (238)

No. 9168. NEW YORK, *Dec.* 9, 1904.

The Corn Exchange Bank.

Pay to the order of L. C. Van Riper, Fourteen thousand seventy Dollars.
$14070.00.

HUBBARD BROS. AND CO.

(Hubbard Bros. & Co.)

(Endorsed on back:)

Pay to order of
Second National Bank,
Hoboken, N. J.
Lewis C. Van Riper.

Received Payment,
Through New York Clearing House,
Dec. 10, 1904,
Second Nat. Bank,
Hoboken, N. J.

91 By Mr. BEACH:

Q. You said the payments from Mercer were how much?

A. About $54,000. I think that exhibit is not here. I don't remember the exact amount. (Examining the exhibit) It was $53,670.

Mr. WORTHINGTON: I want to have this record clearly sho*w*o what my understanding about this matter is. I understood the Hubbard books were here, and took it for granted the Government was not trying to introduce evidence of their contents by something which purported to come from them, when the books themselves were not to be offered in evidence. I want therefore, if I may be permitted, to withdraw what I said a month ago, that I had no objection to these going in for that purpose, provided the Government will produce the books themselves. I understand there may be some question as to whether the Government will produce the books, and therefore I move to strike out these memoranda, on the ground that the books are the best evidence.

Mr. BEACH: I do not quite like to be put in the position of withholding anything from my learned friend. I understand that he himself has subpœnaed the Hubbard books. Is that so?

Mr. WORTHINGTON: I do not know whether we have or not.

Mr. BEACH: You don't know much more about the Hubbard books than I do?

Mr. WORTHINGTON: I don't know anything about the Hubbard books, but I am exceedingly anxious to know about them.

Mr. BEACH: I have not seen them.

The COURT: That is not the question here.

Mr. WORTHINGTON: The question here is whether the Government can put in these memorandums purporting to be made by somebody and sent to somebody, and then keep back the books themselves.

The COURT: It does not make any difference whether anything is kept back or not. Here is an offer of certain papers, and the objection withdrawn to them, under a misapprehension. The objection will be treated now as having been made seasonably, and if there is anything to say why these are admissible or not admissible I will hear it.

Mr. WORTHINGTON: I would like to ask the witness a question or two before I argue that objection.

By Mr. WORTHINGTON:

Q. Have you any independent recollection as to the amounts and dates of your different transactions with Hubbard Brothers in connection with cotton, in the latter part of November and the first part of December, 1904, so that you can state them without any memoranda?

A. Not in detail.

92 Mr. WORTHINGTON: Then I object to these papers on the ground that they are mere memoranda made by somebody else, and there is nothing to show where they came from or that they are genuine, or that they correctly represent any transactions between the witness and Hubbard Brothers.

The COURT: Do you wish to ask him anything further bearing on this point? What are these; are they statements you have prepared recently, or the same you had when you were settled with?

The WITNESS: These are the original statements I had at the time the settlement was made with Haas and Peckham.

The COURT: That would seem to make them admissible.

Mr. LESTER: These Hubbard books are here now——

The COURT: I do not know anything about whether they are here or not, and I cannot consider that question. Here are certain papers sent to him by the parties with whom he dealt, and showing his transactions, and he says he got them.

Mr. LESTER: Our position is that if they are not here they ought to be here, and as a matter of fact they are here. We can readily see how these papers could be some advantage, in that they would collect the data in a form which is easy to read, and we would have no objection to the admission of these papers provided the Government put in these books so that it could be sent from the record itself that these papers were true and correct.

The COURT: It does not make any difference to my mind whether they are true or not. They are what he settled on, and they represent the transaction that was actually consummated.

Mr. WORTHINGTON: Your Honor rules that the papers are competent.

The COURT: They may be treated as in, in connection with the testimony of the witness, and an exception may be noted.

Mr. BEACH: And the checks accompanying them?

The COURT: Certainly; they were a part of the transaction, I understand.

By Mr. BEACH:

Q. Now I next come to the next profit in December, on the ginner's report. I hand you exhibit No. 53-A and ask you what that is?

A. That is a memorandum made by myself on November 29th, 1904.

Q. Of what?

A. Of the profits made on what you term the ginner's report.

Q. Do you mean November?

A. I mean December.

93 Q. What was the profit on what I term the ginner's report?

A. The net profit was $43,285.

Q. Can you tell us in what amounts and through whom the various items were made and paid, to result in that profit?

A. L. H. Mercer.

Q. Is that the same Mr. Mercer we were talking about yesterday?

A. Yes, sir.

Q. What was done with that net profit?

A. From the settlement made on December 13th there was due me $213.38, which I had added to the figures to make them even, and that was deducted, which left $43,071.62.

Q. What became of that?

A. That was devided into four parts.

Q. Who got them?

A. On the night of December 29th, 1904 Peckham and I went up to the Breslin Hotel, and met Mr. Holmes and Mr. Haas in their room there, and paid Mr. Haas $10,767.90. In fact we paid them, as I recall it, $10,800, because we didn't have the exact change. Peckham charged this difference to himself, which appears on the other memorandum, in his own handwriting. It was $32.10.

Q. What was the difference?

A. $32.10.

Q. I hand you a paper marked exhibit No. 53-D, and ask you what it is?

A. It is a memorandum made by myself on December 3rd, 1904.

Q. About what?

A. About this particular payment.

Q. In whose handwriting are the figures $32.10 and F. A. P.?

A. Mr. Peckham's.

Q. In whose handwriting is the footing—37,000?

A. Mr. Peckham's.

Mr. Bryan: We offer in evidence these exhibits 53-A and 53-D.

Said exhibits Nos. 53-A and 53-D are in the words and figures following, to wit:

94

2nd deal.

12/12	42500
12/19	53500
12/19	35000
12/19	75000
	2055.00
8000	41230.00
	43285.00
Van	213.38
	4)43071.62
Peck. & Van each.	10767.90 (Admitted.)

(53-D)
Dec. 30.

	25		
	2525		
	27525	Col.	
	10767.90		
	38292.90	Haas.	
95	Cash	1200.00	V.
			¼
		10767.90)	Dec. 29
		25000.00)	30
		36967.90	
		32.10	F. A. P.
		37,000.00	

(Admitted.)

96 Q. I call your attention to two entries in ink in December 31st and "Col." when were they made?

A. They were made later on.

Q. The others were made when?

A. On December 30th.

Q. Did Mr. Holmes see these figures on Exhibit 53-D?

A. Yes, sir.

Q. Did Mr. Peckham?

A. Yes, sir and Mr. Haas.

Q. I will ask you the same question about Exhibit 53-A; and whether these figures were seen by the parties?

A. Yes sir; they were shown to them at the Breslin Hotel on the 29th.

Q. Mr. Van Riper, did Mr. Holmes ever talk to you about a gold mine which he had?

A. Yes, sir.

Q. When, where, and what did he say about it?

A. It was mentioned first on the trip from St. Louis coming home.

Q. What was said on that occasion?

A. There was not very much said about it. He merely said he had an interest in some claims out in Idaho.

Q. When did he next say anything about it and where?

A. About the last of December, 1904.

Q. Tell us about the place and what he said, and under what circumstances?

A. He and Mr. Haas came into my office and said they had a little contract they wanted me to sign so that Mr. Holmes could show his friends and explain how he got hold of so much money.

Q. When was this, relative to the division you have just been talking about?

A. I think it was on December 30th, or around that time.
Q. What sort of a contract was that?
A. I don't remember.
Q. Have you got it?
A. No, sir.
Q. What became of it?
A. They took it with them.
Q. Have you paid any money to Mr. Holmes for a mine?
A. No, sir.
Q. Have you acquired any mine from Mr. Holmes?
A. No, sir, not that I know of.
Q. Do you recall whether Mr. Holmes fixed on any price for this mine or mentioned any figures?
A. I think they mentioned $10,000; but I am not really positive.
Q. Have you seen that paper since this occasion you speak of?
A. I have not.
Q. Do not answer this question until Mr. Worthington has an opportunity to object. Have the letters of August 18th 1904, and August 21, 1904, being respectively exhibits 2 3 and exhibits 4-5 any reference to this gold mine transaction?
97 A. No, sir.
Q. Do you recall the letters?
A. I had not heard of the gold mine at that time.
Q. Did Mr. Holmes ever talk to you as to what would happen to him if it were known that he was giving out this information?
A. Yes, sir.
Q. Will you state what he said, when and where?
A. He said that nothing could happen to him, that he would merely resign, and they could not prosecute him, as there was no law covering it.
Q. When was this?
A. I think it was in December.
Q. Of what year?
A. Along the 1st part of December.
Q. Did he tell you how he knew there was no law to cover his case?
A. Yes sir. He said he had had legal advice
Q. Did he give the source of that legal information?
A. No, I don't think he did.
Q. Did Mr. Holmes ever talk to you about any earlier rumors or leaks in his department?
A. Yes, sir.
Q. What did he say?
A. On one occasion he told me that he had made a demonstration to President Roosevelt and had shown him his system, and that President Roosevelt had given him a hearing. He said he had gone up to the White House and demonstrated how impossible it was for any advance information to get out before it was officially given out, and that the President congratulated him on the system being perfect.
Q. Did he indicate about when this visit to the White House was?

A. I think it was the time that it was rumored that Sully had the figures in December, 1903. It was just after that.

Q. Did Mr. Holmes indicate whether there was any truth in this assertion of leakage?

A. Yes, sir.

Q. What?

A. He told me that they had furnished the figures to Mr. Price.

Q. Who had?

A. He and Haas; and further that Mr. Haas had come down here at Mr. Price's solicitation to see if the figures could not be made higher than was ordinarily expected at that time and that he went back and reported that the highest they could get it would be 10,250,000 bales.

Q. Do you recall on what report that was?

A. December, 1903. Mr. Price was then short of the market and said that would not do him any good, and he wanted Haas to come back here again and get the yield higher, so that he could get under 10,000,000, so that Price could turn and take the long side instead of the short side. Mr. Haas then came back and Mr. Holmes figured that the best he could do was 10,020,000
98 bales. Haas reported this to Price, and then Price told him to come back and get it under 10 million, if it was only one bale, because of the effect it would have on the market, and agreed to give him a certain fixed price if he would do that. Haas then came back and arranged and so reported to Price.

By Mr. WORTHINGTON:

Q. Arranged what?

A. Arranged to get the figures under ten millions.

By Mr. BEACH:

Q. Do not answer this question until Mr. Worthington has had an opportunity to object if he desires. At the Hotel Breslin interview, which you described yesterday, and referred to again, to-day, was anything said about Mr. Price?

A. Yes, sir. After Haas had paid Holmes the money Mr. Holmes turned to Mr. Peckham and said: "Freddy, we want to draw our money down; that is our share of the $75,000." He said "We don't want to take any risk in these operations." He said: We don't have to take any risk, because Price carries us without any risk to ourselves, and we don't want to leave our money up." I said that I didn't think that was fair; that I didn't want to take all the risk and only get 25 per cent of the profits, and that as long as this money was all velvet I thought it was only fair to leave the fund to operate with. They argued the matter and the argument got quite heated and Haas got a little excited and said that, as a matter of fact, he didn't suppose they were to put any money in the firm; that they thought we were going to put them in for nothing and give them an interest in the firm of Peckham & Mercer. I said there was never anything of that kind talked about at all, and if they insisted on pulling this operating fund down, I would take over their interest in the firm and give them their money in the firm, and that

I would withdraw from the operations, because I didn't want to take that kind of a risk. Then Mr. Haas says: "Well, we don't want you to *feel* that way, Commodore. We want to treat you right; but as long as the Colonel wants to settle this up, let's settle this up and after this we will put up our share of the money. We will form a pool by June, when the next report comes out and we will put up our share. And I said: "Well I have got nothing to say. If you want to pull this money down it's yours. You've got nothing to show for it, but at the same time it is our understanding and you can have it." They said: "Well, that is all right. We will form a pool and we'll put up. How would $20,000 do? Suppose we put up $20,000?" I said whatever you think is right and fair is all I want."

So it was then arranged to come down to my office on the next day and complete the adjustment of this firm matter and the speculative fund. The next day we met at my office.

99 Q. You have already detailed that?

A. Yes sir.

Q. What if anything was done towards the formation of a pool for operating on the report of June, 1905, when did you next see Holmes after that, as well as you can recollect?

A. I saw him about the last of January or the first of February, somewhere around there. He and Mrs. Holmes were in New York on a visit.

Q. Whom were they visiting there?

A. Visiting Mr. and Mrs. Peckham. Mr. Haas was there and I saw them quite a good deal for a day or two, while they were in New York.

Q. Was anything done there towards this June pool of 1905?

A. It was merely talked about. We were forming plans then, at the solicitation of Mr. Price, to try to get Mr. Hyde a better position, so that he would resign from the Department. Mr. Holmes figured that he was sure to be promoted to Mr. Hyde's place. Mr. Haas said that Price would furnish the money to pay Hyde a big salary if we could satisfy Hyde that he was not being gotten out of the way for a purpose; but they were afraid that Hyde might suspect that they wanted him out of the way unless they had him engaged to take charge of some business where he thought they wanted him for his ability. After that I saw Haas quite frequently.

Q. Did you see Holmes after that?

A. I saw Holmes once or twice after that. Early in March Holmes came to my office and said that he had been down and had an interview with Price that day and that he had arranged with Price to meet Mr. Hyde.

Q. Go on and tell all that happened.

A. After that Mr. Haas told me that Hyde had come to New York and had met Mr. Price, and that they had had a talk.

Mr. WORTHINGTON. Was this conversation with Mr. Haas?

A. Yes sir.

Q. Mr. Holmes was not present?

A. Not at this time.

Mr. WORTHINGTON: I submit that we have not got anything to do with that:

Mr. BEACH: I think that is right.

(After conference.)

My associate/ say I ought not to take the position I do.

Mr. BAKER: It was in furtherance of a conspiracy. There was a movement to get Hyde out of the way. But he is relating what led up to the June matter. That is to say they were going to operate on the next cotton report.

100 The COURT: That did not result in anything, did it?

Mr. BAKER: They attempted to do it, but it did not result in anything.

The COURT: I would not put in what attempts were made, that did not result in anything.

By Mr. BEACH:

Q. I do not see what Mr. Haas said to you about what Mr. Hyde did or did not do. Anything that Mr. Haas or Mr. Holmes may have said as to this deal would be proper.

Mr. WORTHINGTON: I do not object to his stating anything that he said Mr. Holmes said, or that took place when Mr. Holmes was present. I suppose that is competent under your Honor's rulings, in a case of this kind.

The COURT: Let him confine himself to that for the present.

By Mr. BEACH:

Q. Go on with reference to this June 1905 deal. You may continue and tell us what either Mr. Haas or Mr. Holmes told you about that, and their plans.

Mr. WORTHINGTON: I object to anything Mr. Haas said unless Mr. Holmes was present.

The COURT: That should be confined to what was said when Mr. Holmes was present.

Mr. BEACH: What did Mr. Haas and Mr. Holmes do?

Mr. WORTHINGTON: To his personal knowledge; not from what Mr. Haas said.

By Mr. BEACH:

Q. Not what he said, but what he did.

Mr. BAKER: May I suggest that if Mr. Haas came to see him about a deal that was to be made in June, and Mr. Holmes, according to the testimony was a co-conspirator with Mr. Haas, certainly what Mr. Haas said and what he did in regard to that deal is admissible in evidence against the defendant Holmes.

The COURT: The trouble is that he is liable to put in a great many things by way of narration that would be inadmissible. You all know pretty well what the witness is going to say. I don't know.

By Mr. BEACH:

Q. You may proceed, Mr. Van Riper, and tell us what either Mr.

Haas or Mr. Holmes did, to your knowledge, about this proposed June deal.

A. On this last visit of Holmes to my office he said that he was then going out to visit some of the State agents or Special agents, and that Price was planning that if this report would appear bearish to accumulate a big line of cotton in June, and that as he expected then to be the head of the Department of the Bureau of Statistics they would be able to give any kind of figures they wanted, for the next two months.

101 Q. Did he state why he expected to be the head of the Bureau of Statistics?

A. They were just then trying to get Mr. Hyde out of the way in some manner.

Q. Go ahead.

A. Then later Haas told me that Price had met Hyde and did not like him, and was afraid to do business with him direct; and that they were then planning to get Hyde sent to Europe to report on foreign crops or foreign cotton or something—to have him sent in the interest of the Government, and that he would be gone four months. Later they told me it was four months. At a later interview Haas told me——

Mr. WORTHINGTON: One moment. You cannot state what Haas told you.

The COURT: If it is mere narration, I think not. He was not going to do anything on the statement that Hyde was going to Europe?

Mr. BEACH: They wanted him to do something.

The COURT: They were not asking him to do anything I understand. They were keeping him posted as to what was happening somewhere else. If that is it, I do not think it is admissible.

Mr. BEACH: I may understand your Honor; but my idea was that these parties in the final December division taking down the money that was in this man's hands——

Mr. WORTHINGTON: I have concluded to withdraw this objection and go into all of this business as to what Haas said whether Holmes was there or not.

By Mr. BEACH:

Q. Go ahead?

A. Later Haas told me that they had got Hyde appointed to go to Europe and he would be gone four months. During that time Mr. Holmes would be the head of the Department and they would have everything their own way.

Q. This was about when, as near as you can fix the time?

A. This was about the middle of March or the first of June.

Q. What year?

A. 1905.

Q. Continue as to anything that either of these parties did and reported to you, in this general line?

A. I don't remember anything that happened then until towards the June report. Mr. Haas used to drop in there now and

then. Along about the middle of May, somewhere around that time, he said that he would soon be ready to begin operations. I told him I was ready to put my money up and he said he was ready to put his up.

Q. Did he do it?

A. I didn't hear from him again until the 31st of May. He outlined at the last visit that the plan was for a bear market,
102 and that the indications then were that the June report would be very bearish; that he would let me know when anything developed. On the 31st of May he called me up on the long distance telephone and said he was in Baltimore. He said: "Get in and buy all you can." I said: "Why, the market has been going up for a week or ten days, and it looks dangerous now to buy." He said: "Its all right; go in and buy." I said "Have you got the figures?" He said: "Yes; the acreage will show a reduction of about thirteen per cent and condition will be around seventy-five."

Q. Did he say where he got that information?

A. He said he had seen the Colonel. Then I bought some cotton on the market, and the market began to break right away. Before he cut off he said: "I will meet you at the Waldorf at eight o'clock or somewhere around that time." I think he stated the hour. It was that night some time. So I went to the Waldorf and met him in the corridor of the Waldorf. He said: "I just met Price and Price is very much excited. I think he has gone to work and got short of the market, and I have got to go up to his room. He said it was room 934 or 964—I am not sure of the number of the room that he gave me. He says: "You had better go to your room and I will call you up within an hour." So I went to my room and waited there for a half or three quarters of an hour. He called me up and told me to meet him at the Thirty-third Street down town L, and said: "I have got to go down South." So I got a cab and went over there and met him. He says: "Price wants me to go down and see the Colonel and see if this report can't be figured so that it will be more bearish. He has gone to work and got short of the market." He says: "I don't know what to tell you to do." I said: "How about this $20,000 you were to contribute? "Well," he says, "I will be here and fix that up with you tomorrow." He says: "Don't do anything until you hear from me." So I got on the Elevated and rode down with him to the Baltimore & Ohio Depot. I coaxed him not to come down here. I said: "Don't do that." I fairly pleaded with him not to come down here and try to do anything like that. He said: "I don't think I will go near the Colonel; but I promised Price I will go down, and I will go down. I have got to keep my word with him; but don't you do anything until you hear from me." So the next day he called me up on the 'Phone and said he was in Baltimore. He says: "I have seen the Colonel and there will be no change." I said "All right." He says: "I will be up to close that other matter with you tonight." He says: "You had better stand pat," and I said: "All right."

Q. What other matter . . he refer to?

A. The $20,000 item.

Q. Go ahead.

A. So I didn't see him any more that day; but the next morning on the morning of the report he called me up about 8:30 or
103 9 o'clock, and says: "I have just gotten a code message from the Colonel," and he says—$11\frac{1}{2}$—77, about. I says: "That is not what you told me yesterday." He says: "Well, that's what it will be." "Now," he says, "I think you had better get out." In the meantime cotton had been breaking and had gone down, and I had a beautiful loss in my account of about twenty or thirty thousand dollars.

Q. What do you mean by "$11\frac{1}{2}$" and "77"? You will have to explain that.

A. $11\frac{1}{2}$ was the percentage of reduction in acreage, and 77 was the condition. So I said to him: "Well, I am not going to get out." I said: "How about that money?" He says: "Oh, I will come in and fix that all right."

Q. Did he come in?

A. No, sir; he never came near me.

Q. The crop report came out on that day, did it?

A. Yes sir.

Q. How did the figures on the report compare with the figures $11\frac{1}{2}$ and 77; if you remember?

A. The acreage reduction was 11.4 and the condition was 77.2.

Q. Do not answer this unless there be no objection. Did Mr. Holmes ever tell you how he got this advance information?

A. Yes sir.

Q. What did he say about it?

A. He said that he was able to get hold of the State Agents' and general agents' reports the day before, and those were about all they paid much attention to; and that he was a very rapid mathematician and could figure very rapidly, and about all he had to do was to look at a page of figures and he could tell what the footing was. He said that Mr. Hyde always took his recommendations, anyway.

Q. I now hand you Exhibits 18 and 19, and I will ask you in whose handwriting the face of them is?

A. They are signed by myself, but the handwriting is that of a clerk.

Q. The endorsement is in the handwriting of whom?

A. Of F. A. Peckham and E. S. Holmes, Jr.

Q. In each case?

A. Yes sir.

Mr. BEACH: We offer these exhibits in evidence.

Exhibits Nos. 18 and 19 are in the words and figures following, to wit:

104 (18)

No. A 1625 M. H. S. 25 HOBOKEN, N. J., *Sept. 26th*, 1904.

The Second National Bank of Hoboken, Through New York Clearing House Association.

Pay to the order of F. A. Peckham One hundred & 00/100 Dollars. $100.00.

LEWIS C. VAN RIPER.

(Endorsed on back.)

"F. A. Peckham.
Signature of check O. K.,
E. S. Holmes, Jr.

Pay Chemical Nat'l Bank,
New York
or order
Union Nat'l Bank,
Philadelphia,
W. M. Carpenter, Cashier.

Pay
And bank or banker
Endorsements guaranteed
Chemical National Bank
Washington, City,
A. P. Huff, Cashier.

105 Received payment,
Through New York Clearing House,
Note Teller
Oct. 3 1904
The Chemical National Bank
of New York.
No. 12.

(19)

No. A1626 HOBOKEN, N. J. *Sept. 26th*, 1904.

The Second National Bank of Hoboken, Through New York Clearing House Association,

Pay to the order of F. A. Peckham one hundred and 00/100 Dollars.
$100.00.

LEWIS C. VAN RIPER.

The Second National Bank
Sept. 30 1904
(Stamp)
Hoboken, N. J.
P. T.
(Stamp)

(Endorsed on back.)

Pay Chemical Nat'l Bank,
New York
or order
Union Nat'l Bank.
106 Philadelphia.
W. H. Carpenter, Cashier.

F. A. Peckham.
E. S. Holmes, Jr.

Pay
Any Bank or Banker,
Endorsements guaranteed
Central National Bank
of Washington City
A. B. Ruff, Cashier.

Received payment,
Through New York Clearing House,
Note Teller
Sep. 30 1904
The Chemical National Bank
of New York
No. 12.

107 By Mr. BEACH:

Q. For what were those two checks given, if you know, Mr. VanRiper?

A. They were loans to Peckham.

Q. Referring to the December report of 1904—the cotton crop report of December 3rd, I think it was—how did the figures you received in advance of the report agree with the actual figures of the report when published?

Mr. WORTHINGTON: I think the form of that question is objectionable, your honor. He may ask him what figures he got.

Mr. BEACH: I am advised that he told those figures.

Mr. BAKER: He has testified to the receipt of the figures.

Mr. BEACH: I thought he had; I am sorry.

By Mr. BEACH:

Q. How did the figures you received compare with the figures of the crop report as issued?

Mr. WORTHINGTON: I object to that form of question as calling for a conclusion, your Honor. He can state what figures he received.

Mr. BEACH: Has he not told that, Mr. Worthington? I thought he had.

By Mr. BEACH:

Q. Can you say what figures you got on the December, 1904, report, in advance of the report itself?

A. Yes, sir.

Q. What were they?

A. Haas called me up on the 'phone and said: "I just got a message from the Colonel; he says it will be a little under 12,200,000; and he says further the report will say that this does not include linters."

Q. I do not know what "linters" may be. What is meant by that?

A. It is a product made from seed cotton.

Q. Yes.

A. An inferior grade of cotton.

Q. Did you see the crop report as issued?

A. Yes, sir.

Q. How did the information thus given you compare with that?

A. My recollection is that the figures issued were 12,162,000, and that the statement regarding linters was also made.

Q. Did you communicate the information which Haas thus telephoned you to anyone before the crop report was issued?

A. I think I told Mr. Mercer what the figures would be; but I did not tell him any source of information.

Q. My question was, did you tell him before the crop report was actually issued, yourself?

A. Yes, sir.

108 Mr. BAKER: Now we want to offer in evidence, if the Court please, the report of December 3rd, 1904, 11:15 a. m.

"Preliminary returns to the chief of the Bureau of Statistics of the Department of Agriculture indicate a total production of cotton in the United States in the year 1904-05 amounting to 12,162,000 bales. Round bales have been included in this estimate and reduced to their equivalent in square bales. The estimate does not include linters.

"The estimated production by States will be made public on December 5, at 11 a. m.

JOHN HYDE,
Chief of Bureau.

Approved:
JAMES WILSON,
Secretary."

Cross-examination.

By Mr. WORTHINGTON:

Q. Mr. Van Riper, your largest profits on this business seem to have been in that operation of December, 1904. Was that made in buying cotton or selling?

A. Selling.

Q. You sold understanding that the crop report would be such that the price would go down?

A. Yes, sir.

Q. And it did go down?

A. Yes, sir.

Q. When did you begin selling that cotton by which you made that money?

A. Around the middle of November.

Q. About the middle of November?

A. Around the middle.

Q. Have you anything here which will show when you made your different purchases?

A. I have not anything myself; I think we have some——

Q. I mean, is there anything here which will enable us to find out?

A. I think so.

Mr. WORTHINGTON: I would like to know what it is, and get at it.

(Certain exhibits which had been introduced in evidence *are* taken by the stenographer were sent for.)

By Mr. WORTHINGTON:

Q. When you gave directions to the brokers to sell this cotton, of course you gave them the ordinary formal order slip? Somebody made the order?

109 A. No; it was done either by 'phone or verbally or by cable.

Q. What do you say?

A. It was done either by telephone, verbal order, or by cable.

Q. Well, somebody reduced the thing to writing before the order was executed?

A. I do not know about that.

Q. You say not?

A. I did not say.

Q. Did you yourself, when you directed the brokers to sell cotton for you in November, 1904, give the orders to them in writing, any of them?

A. I do not think so.

Q. You gave the order if it was in New York by telephone, and if it was a Liverpool firm by cable?

A. By cable: yes, sir.

Q. But I suppose you would write the cablegram?

A. Yes sir.

Q. Have you any means of letting us know just how much cotton you bought on the different days in the latter part of November, and how much you sold, and when it was sold?

A. I think so.

Q. And at what figures?

A. I think so.

Q. How can you do that?

A. By reference to the various accounts.

(Certain papers and books were produced and handed to Mr Worthington.)

Mr. ADKINS: Those are the Waterhouse statements.

By Mr. WORTHINGTON:

Q. Here are what purport to be statements of Waterhouse & Sons of Liverpool. Will they help you in that respect so far as they are concerned?

A. Yes sir; they will.

Q. I wish you would tell us, and have it put down here, on what dates you ordered cotton to be sold, and in what quantities, and at what prices, in November, 1904.

A. We began selling on November 10th.

Q. What was the quantity?

A. 1800 bales and 200 bales—2000 bales on November 10th. November 17th, 2000 more. November 18th, 1000. November 23rd, 1000. Do you want all of them?

Q. Yes; I would like to have all of them.

A. November 28th, 5000 bales. November 29th, 5000 bales. That was with Waterhouse; that was Liverpool.

—. Then all the Liverpool business was done in that month between the 10th and the 29th, did you say?

110 A. Yes, sir.

Q. Of November?

A. Yes sir.

Q. Upon what information were you selling cotton with the expectation of making a profit in December?

A. On Mr. Haas's reports.

Q. Mr. Haas's reports in writing or verbally?

A. No, sir; verbal.

Q. And he told you his information came from where?

A. From Washington.

Q. From Washington?

A. From Mr. Holmes.

Q. And that Mr. Holmes was letting you know, from the 10th, the 29th of November, what the December 3rd cotton crop/ r port would be?

A. Not exactly; but that he was sure it would be very bearish.

Q. He was sure it would be very bearish?

A. Yes, sir.

Q. Did Mr. Haas or Mr. Holmes tell you how he knew that so long in advance?

A. No, sir.

Q. Was any explanation ever given to you?

A. No, sir; except that he had ways of getting information as to conditions.

Q. You say "except ways of getting information"; what were they?

A. As to conditions; I don't know how.

Q. You understood that in some way between the 10th and the 29th of November Mr. Holmes was getting information which enabled him to say what the cotton crop report in December would be?

A. Yes, sir.

Q. And communicating that information to you through Mr. Haas?

A. That is, not exactly what it would be, but——

Q. I mean, approximately.

A. Yes, sir.

Q. He was letting you know near enough what it would be that you felt quite sure you could put in a very large sum of money with a certainty of making a profit on it?

A. Well, it was with the understanding that we would know positively what it would be in time enough to get out in case we were wrong.

Q. Oh! Well, was the time fixed when you would be advised?

A. Yes, sir.
Q. And what was the time?
A. Well, we were always to know the day before.
Q. You were always to know the day before?
A. Yes sir.
Q. Just what the figure would be?
A. Yes, sir.
Q. And you were also told—was it Mr. Holmes who told you that he did not pay much attention to any reports except those of the State agents and the special agent?
A. Yes, sir.
Q. He told you that himself?
A. He did.
Q. Did he tell you at what time they came in?
A. No; he did not tell me that.
Q. Did not Mr. Haas tell you, along between the 10th and the 29th of November, that the cotton crop report would be bearish?
A. That is what they thought then.
Q. What do you say?
A. That is what they thought.
Q. I suppose the market for cotton goes up and down like other things in your exchanges over there in New York?
A. Yes, sir; it does.
Q. How were you guaranteed that you would not loose this money before the 2nd of December would come around?
A. Well, we had additional security in following Price's operations, who was a very large operator.
Q. Oh, yes; I would like to know about that. What was the name of Mr. Price's firm?
A. Mr. Price does business through different firms, the same as I did.
Q. He is one of the largest cotton operators there, is he not?
A. Yes, sir.
Q. And the newspapers that give accounts of these things pay a great deal of attention to whether Price is buying or selling cotton?
A. Yes, sir.
Q. And you were getting information through Haas?
A. Yes, sir.
Q. Of what Price was doing?
A. Yes, sir.
Q. You understood that Mr. Haas was betraying Mr. Price in that regard; did you not?
A. I understood that he knew what Price was doing.
Q. I ask you if you understood he was betraying his employer?
A. I don't know as he was betraying him.
Q. Did you understand that
A. (Continuing.) Because it was not injuring Price any.
Q. That is not an answer to my question. Did you understand from Mr. Haas that Mr. Price did or did not authorize him to communicate to you what Price was doing in buying and selling?

Mr. BAKER. I object to that on the ground that it is immaterial, if the Court please.

A. No, sir——

The COURT: I do not think it could be excluded—the moral quality of the witness's conduct throughout.

(By request, the stenographer read aloud the pending question.)

112 A. I did not understand anything about it.

By Mr. WORTHINGTON:

Q. You asked no questions?

A. No, sir.

Q. As a matter of fact, did Mr. Haas tell you in November that Price was selling?

A. He did.

Q. So that you had that to aid you in your operations?

A. Yes, sir.

Q. Are you able to tell us whether, in your own mind, you attached more importance to what Haas told you Price was doing or to what Haas told you about what the Government crop report in December would be?

A. I attached more importance to the Government crop report.

Q. Decidedly more?

A. Yes, sir.

Q. I think I have asked you this before, but I would like to make sure of it: Did either Mr. Haas or Mr. Holmes tell you where Mr. Holmes got the information upon which he was enabled to say as early as the 10th of November that the cotton crop report in December would be bearish?

A. No, sir; I don't remember that he did.

Q. Did any of them ever tell you that none of these crop reports came in until a day or two before the report day—I mean, neither the State agents' nor the special agents' reports?

A. Yes, sir.

Q. But they did not tell you where he got the information by which he was going to tell what they were going to be before they came in?

A. They did not pretend to tell me what they were going to be, only that they expected that they would be bearish or bullish.

Mr. WORTHINGTON: Now have we got the material here for telling when he made these sales through Hubbard?

(Certain books and papers were handed to Mr. Worthington.)

Mr. LESTER: Where are the reports? These are the books; but where are the little orders with those yellow slips attached?

(Certain other papers were handed to counsel for the defendant.)

By Mr. WORTHINGTON:

Q. Mr. Van Riper, I think you said that Mr. Holmes told you that Mr. Hyde always adopted his recommendations; or did you say that Haas told you that Holmes told him that?

A. Yes, sir; Mr. Holmes told me that Mr. Hyde took his recommendations.

Q. Did he tell you why, if that was so, that they wanted to get rid of Mr. Hyde?

A. For fear that Mr. Hyde might at some time overrule them.

Q. Oh! Just on the prospect that some time he might not accept Mr. Holmes' recommendations?

A. Yes, sir.

113 Q. What is your age, Mr. Van Riper?

A. Forty-two.

Q. Where were you living when you attained the age of man, twenty-one?

A. I lived in Neoraska.

Q. I beg your pardon?

A. In Syracuse, Nebraska.

Q. How long did you live there?

A. I lived there from 1880 to 1885.

Q. Then where did you go?

A. I came to New York.

Q. How long did you stay in New York?

A. I was here from 1885 to 1889.

Q. Then where did you go?

A. I went to Chicago.

Q. Then you went to Chicago?

A. Yes, sir.

Q. How long did you live in Chicago?

A. In Chicago until 1897.

Q. Then where did you go?

A. To New York.

Q. And you have lived there ever since?

A. Yes sir.

Q. What were you doing when you were in New York the first time, before you went to Chicago?

A. I was contracting and building.

Q. Contracting and building, did you say?

A. Yes, sir.

Q. Anything else?

A. I speculated a little occasionally.

Q. Were you in business, speculating as a business, or making an occasional "flier"?

A. No, sir; just merely on my own account.

Q. Then you went to Chicago. How old were you when you went to Chicago, Mr. Van Riper?

A. I went there in 1889; about twenty-five.

Q. And you were in Chicago from 1889, did you say?

A. 1889 to 1897.

Q. Eight years. What were you doing there during those eight years?

A. I was in the contracting business there up to 1894, and then I went into the brokerage business.

Q. What do you mean by "the brokerage business"?

A. The commission brokerage business.

Q. General brokerage business?

A. Yes, sir; stocks and grain.

Q. Were you in by yourself or with somebody else?
A. I was in by myself there.
Q. Did you have a firm name?
A. Yes, sir.
Q. What was it?
A. Van Riper & Company.
114 Q. How long did you carry on business as Van Riper & Company?
A. I don't remember the exact time; a year or so.
Q. Then what?
A. I came to New York after that.
Q. I understood you to say you were in Chicago from 1889 to 1897?
A. I went into business there, into the brokerage business, in 1884, and I ran the firm of Van Riper & Company—I can't swear the exact time; and then, after that, I took a position with the firm of Robert H. Kelley & Company for about a year.
Q. Yes—Robert H. Kelley?
A. Yes, sir.
Q. What was your position with Kelley?
A. I was general manager of the business.
Q. Were you not connected with any other business except that which you carried on in your own name and that of Kelley?
A. No, sir.
Q. Do you know a man by the name of Van Winkle?
A. Yes, sir.
Q. Did you have any business relations with him?
A. Oh, I forgot about that. I was employed in his office about three weeks as a clerk.
Q. As a what?
A. I was a clerk in his office about three weeks.
Q. What was his business?
A. He was running a brokerage business there.
Q. Any special kind of brokerage business?
A. Yes; I found out it was a bucket shop business.
Q. You found that out?
A. Yes sir.
Q. He was one who carried on this kind of business where you send circulars over the country; was he not?
A. Yes, sir.
Q. What?
A. What do you mean?
Q. That was a business where you sent circulars to people all over the country?
A. Yes, sir.
Q. Telling them that you could make money for them by speculating?
A. Yes, sir.
Q. He kind of went to pieces before long; did he not?

Mr. Baker: I object to that, if your Honor please.

The Court: I do not think it is important to follow that any further.

Mr. WORTHINGTON: I would like, your Honor, to have the opportunity to show somewhat in detail the character of business which the witness has been engaged in.

The COURT: I do not think whether that business went to pieces or not is material. I think you have a right, and I shall allow you, to follow pretty thoroughly his career, if you wish to.

By Mr. WORTHINGTON:

Q. Was Mr. Van Winkle indicted?

Mr. BAKER: I object.

The COURT: That may be excluded.

By Mr. WORTHINGTON:

Q. While you were with him did you surreptitiously obtain a list of the persons to whom he had been sending out circulars?

A. No, sir.

Q. Did you get one at all?

A. No, sir.

Q. Either while you were with him or afterwards?

A. No, sir.

Q. In the business that you carried on under the name of Van Riper & Company did you send out these circulars?

A. I did some mail business; yes, sir.

Q. I beg your pardon?

A. We did mail business as well as local business.

Q. In which you informed the people to whom you sent them that *that* you suggested they send you money and put it where you could speculate with it?

A. I would not say that. We did a regular brokerage business, issued market letters in the regular way.

Q. I suppose you have not one of those circulars handy?

A. No; I am sure I have not, so long ago as that.

Q. I beg pardon?

A. Not so long ago as that.

Q. What about Kelley & Company? Was he still carrying on business when you went to New York?

Mr. BAKER: I object to that.

The COURT: Kelley & Company? Is that one of the firms he was with?

Mr. BAKER: He worked for them; yes. Now the question is whether they were still carrying on business when he went to New York?

The COURT: I do not see any importance in that.

Mr. WORTHINGTON: These are matters entirely within your Honor's discretion.

The COURT: I will exclude that.

By Mr. WORTHINGTON:

Q. Was Kelley arrested?

Mr. BAKER: Objected.

The COURT: I will exclude that.

By Mr. WORTHINGTON:

Q. Was not the business which Kelley was carrying on that of obtaining money by fradulent use of the mails?

A. No, sir.

Mr. BAKER: I object to that.

A. It was not.

116 The COURT: I will permit that.

Mr. BAKER: He has answered it.

Mr. WORTHINGTON: He has answered it "No"?

Mr. BAKER: Yes.

By Mr. WORTHINGTON:

Q. What was the business exactly, that Kelley carried on?

A. A regular brokerage business; a brokerage commission*er* business.

Q. Were you connected with Kelley at the time you moved to New York?

A. No, sir.

Q. How long before you went to New York had you left Kelley?

A. I don't know exactly; a few months before.

Q. What were you doing during that three months?

A. I was engaged in—I hardly know how to describe it; it was some kind of a patent pie-crust preparation that some fellow had in Chicago by the name of Williamson. I took that up and started to put it on the market.

Q. Patent pie-crust?

A. Yes, sir; prepared flour.

Mr. WORTHINGTON: I suppose I cannot as- whether the patent pie crust was a success or a failure?

The COURT: I do not think that would indicate anything that would help the jury.

Mr. WORTHINGTON: I think prima facie that would be a criminal business.

By Mr. WORTHINGTON:

Q. After you went to New York, what business was that you were in there, and with what firms or corporations were you connected?

A. I was with Lawrence & Simons for a while, until they failed in 1898. Then I started to speculate on my own account. I thought I knew all about the market by that time, and tried my hand at that.

Q. Yes.

A. Then from that organized the New York Mailing and Advertising Agency. I owned that and ran it, managed it, up to a year ago, the first of January, when I sold it out. Then I bought control of a railroad out in Idaho, and I have been out west quite a good deal for the last year. In fact, I have been in Goldfield most of the time, operating some leases there.

Q. Have you stated all the concerns you have been connected with since you moved to New York?

A. Why, substantially all that I have been personally identified with.

Q. Were you not president of a Chemical Company there?

A. Yes, sir.

Q. What was the name of the Company?

A. The Van Riper Chemical Company.

Q. What branch of the chemical business was that company engaged in?

A. Oh, just making bed-bug powders.

117 Q. Bed-bug poison?

A. Various insect powders.

Q. Was that the entire business of the Van Riper Chemical Company?

A. Yes, sir; practically, as far as I remember.

Q. I have been asking these questions while we were waiting for these exhibits. I wish you would look now at these memoranda and give us the dates when you sold cotton in November, 1904, through the firm of Hubbard Bro.hers & Company?

A. November 22nd, 1904, 1000 bales. November 23rd, 200 bales. November 25th, 700 bales. November 28th, it says "ten bales," but I think it is a thousand. I think that means, "ten hundred."

Q. Yes; you would not deal in ten bales?

A. No. Then there are two fives after that; that would be 2,000. Again on the 28th, 1,000. On the 29th, 1,000. November 30th, 3,000. December 1st, 1,000 and 3,000. That is as these memoranda appear. I am not positive that these are exactly accurate.

Q. That agrees with your general recollection, I suppose, of the time you made these sales?

A. Yes; that is substantially correct.

Q. The great bulk of the sales which you made upon which you realized this large profit in December, 1904, were sales that were made in the month of November?

A. Yes, sir; but they were not bought in until after the report. They were not bought in until after December 3rd.

Q. That is exactly what I want to get at. You sold it in November upon information as to what the December report was going to be; and then when it turned out to be what you expected it to be, you bought?

A. Yes, sir.

Q. Perhaps you can enlighten me a little about that. You say you sold cotton and you bought cotton. You have speculated a good deal in cotton over there, I suppose?

A. Yes, sir.

Q. You have bought a great deal?

A. Yes, sir.

Q. Did you have any warehouse to keep it in?

A. No sir; I never had any delivered to me.

Q. And when you sold you did not deliver any?

A. No, sir.

Q. You settled on differences?
A. Yes, sir.
Q. You never expected to deliver any when you sold it?
A. No; I do not think I had that in mind.
118 Q. You never expected to get any when you bought it?
A. No, sir.
Q. It was speculation pure and simple?
A. Purely.
Q. Mr. Van Riper, are you not mistaken in saying that you bought back all this cotton after the December 3rd cotton crop report? Did you not buy a lot of it back before?
A. I did not mean to say that I bought it all back. I bought the bulk of it back after the report came out.
Q. Give us the dates?
A. And I probably made some "scalps" in between there, what we call "scalps"—that is, bought and sold, and sold it out again.
Q. When you sold and bought back in November, did you make any profit?
A. Yes, sir.
Q. Is that part of this $167,000 profit?
A. Yes, sir.
Q. Then how much of this profit had been made before the December crop report was out at all?
A. My recollection is that on the cotton closed out, that was sold in November, the profit was eight thousand three hundred and some odd dollars.
Q. When you were doing this business which you call "scalping," were you doing that on information that purported to come from Mr. Holmes?
A. I did it at Mr. Haas' request.
Q. I beg pardon?
A. Mr. Haas asked me to do that.
Q. Did he tell you that he wanted you to do it because of anything Holmes was communicating to him?
A. I do not know that he did at that time.
Q. Do you remember what he told you as any reason for letting go or buying any part of that cotton?
A. Well, he said that Price would probably take in a little of the short cotton, and that it was a good place to cinch a profit.
Q. Did you sell it to Price?
A. I don't know who we sold it to.
Q. There was not any reason in the world why Mr. Haas, by this operation, knowing that Mr. Price was selling cotton, might not be having somebody else buy it, and vice versa?
A. He claimed to know just what Price was doing.
Q. And you understood he was communicating that to you so that you could use it for your profit?
A. Yes, sir.
Q. And that you and Haas and Holmes were to divide that, and Peckham?
A. Yes, sir.

Q. So that you were engaged, in part at least, in a scheme of speculating there which had not anything to do with the crop reports?

119 A. It was all taken under one general agreement.

Q. You all were in together?

A. Yes sir.

Q. Did any of you use the information which you got from your general knowledge of these matters in deciding whether you would buy or sell?

A. Certainly.

Q. What?

A. We certainly did.

Q. There is some pretty valuable general information which comes out in some of the newspapers, is there not?

A. Well it is generally discounted before it is published.

Q. Oh you had other ways of getting information?

A. Well, we used every way we could.

Q. Did you not understand that Mr. Price had men in the bottom regions who were reporting to him?

A. Yes sir.

Q. And that you were getting that information through Haas?

A. Yes, sir.

Q. For your benefit?

A. Yes, sir.

Q. What other sources of information did you have besides what was supposed to come from Holmes, what you knew of what Price was doing, and the information that Price would get from his people down in the cotton regions: You said it was generally discounted before it appeared in the newspapers?

A. General knowledge of the market movements.

Q. You kept yourself pretty well informed, did you not, on the prospects?

A. I tried to, yes.

Q. Well, you did, as a matter of fact, did you not; Mr. Van Riper?

A. Yes, sir, the best I could.

Q. You were a pretty well informed man on the subject, without any regard to surreptitious information from Mr. Holmes?

A. I tried to be. I don't know whether I could be called an expert in that line; but I tried to.

Q. You tried to be. We will excuse your modesty if you say that you were. As a matter of fact, now, you were a pretty well informed man on that subject, and you are still?

A. I thought I was, yes.

Q. Did you not issue a periodical or book called "Ins and Outs of Wall Street?

A. Yes, sir.

Q. By a Successful Speculator?

A. Yes, sir.

Q. When did you get that out Mr. Van Riper?

A. Oh, I issued several editions of it.

Q. And it is running still?

120 A. Why I am getting letters asking for it all the time.

Q. When did you begin publishing that?

A. I think in 1898, or 1899.

Q. Soon after you went to New York?

A. Yes, sir.

Q. So that you did hold yourself out to the public as a successful speculator and well-informed man about these matters?

A. At that time I thought I knew it all, pretty near.

Q. I guess you found out that nobody knows it all?

A. I found out differently later.

Q. Along in 1901, did you consider yourself pretty well advised about it then?

A. Well I was at that time; yes.

Q. As a matter of fact Mr. Van Riper, you were speculating in cotton, and you were getting information from every source you could to help you do it profitably?

A. Certainly.

Q. Is not that so?

A. Yes, sir.

Q. And one of the factors was the information which you supposed you were getting about the Government crop reports in advance?

A. Yes, sir.

Q. Was there anything said at any time about having these reports "doctored" so that they would come out the way folks wanted them to be?

A. There was afterwards?

Q. Where was that?

A. In connection with this June report.

Q. There never had been anything said on that subject before that time?

A. No, sir.

Q. And you are quite sure about that?

A. I don't recall that there was.

Q. There is a letter put in evidence here by the Government, you will remember, which you say, as I understand, is in Mr. Peckham's handwriting, and addressed to you, in which he says: "Holmes has padded matters." I think that is *is* his expression. (After a consultation:) Oh, "The Colonel has padded matters," meaning Holmes. Now, I understand you to say you do not know what that meant?

A. I did not know at that time what he meant exactly.

Q. And you did not have curiosity enough to ask Mr. Peckham what it meant?

A. I may have; I don't recall that I ever did.

Q. You have never been indicted, Mr. Van Riper?

121 Mr. BAKER: I object.

Mr. WORTHINGTON: I propose to go to work to show a motive in this business.

Mr. BAKER: Do you mean indicted in this case. Is that what you refer to?

Mr. WORTHINGTON: Yes.

Mr. BAKER: Oh, I do not object to that.

Mr. WORTHINGTON: Oh, no; I do not care to go into anything else. I meant in this case.

Mr. BAKER: I do not object to that.

Mr. Mr. WORTHINGTON:

Q. You have not been indicted at all or arrested in connection with this alleged arrangement *with* Mr. Holmes?

A. No, sir.

Q. How did you get out of it?

A. I never had any fear of it?

Q. Because you were not in it or because you did not think it was any offense?

A. I did not think I had committed any offense.

Q. You found out that Mr. Holmes and Mr. Haas and Mr. Peckham had been indicted?

A. I learned it; yes, sir.

Q. The Government claims that it was a criminal offense; you were in it the same way they were, were you not?

A. Not exactly.

Q. Just tell us what was the difference, as you understand it, between your situation and theirs?

A. Well, in the first place, they brought the scheme to me. I had nothing to do with originating it or planning it. They came to me to get me to operate.

Q. You did not understand——

A. I was looking for advance information, and as long as Price was getting it, or any one else, I thought I had a perfect right to get it.

Q. You did not think there was anything wrong in your carrying out the scheme and carrying on the operations and dividing the proceeds and giving Mr. Holmes his share?

A. I did not give Mr. Holmes his share.

Q. What?

A. I never gave Mr. Holmes anything.

Q. Well you gave it to Mr. Haas, understanding that it was to go to Mr. Holmes?

A. Yes, but I did not know that until I saw him give it to him.

Q. Where did you first learn that Mr. Holmes was to get any share of these profits?

A. I first learned it on December 11th or 12th or 13th—one of those three dates.

Q. 1904?

A. Yes, sir.

122 Q. Up to that time, so far as you know, then, Mr. Holmes was not in any arrangement with anybody to receive any compensation for disclosing Government secrets?

A. He told me he was doing it for friendship for Peckham at the start.

Q. That does not answer my question, quite, Mr. Van Riper.

A. I beg your pardon; what was the question?

(The stenographer read aloud the pending question.)

Q. No; not positive. I have no positive knowledge of it.

Q. I want to know whether you had any knowledge or suspicion, prior to that, that he was being paid for what he was supposed to be doing in the way of giving out information about the cotton report?

A. He told me that he had received certain moneys from Price through Haas.

Q. Did you understand from that that he was being compensated indirectly for giving Haas information?

A. Yes; yes, sir.

Q. Then you did understand that you were carrying out a scheme by which a government officer was to benefit for disclosing government secrets?

A. I know that he said he was getting money through Haas from Price, but I never agreed to pay him any money.

Q. Then prior to the middle of December, the 11th or 12th or 13th, along there, you did not have any suspicion that Mr. Holmes was getting paid for what you were engaged in, that he was to get a part of it?

A. I may have had suspicion, but I had no knowledge.

Q. You did not ask any questions?

A. No, sir.

Q. That is the reason that you think you were not guilty of anything?

A. I think I had a right to get the information if I could.

Q. And to pay a Government officer for giving it?

A. I did not pay any government officer.

Q. Well, you said you had your suspicion that he was getting something. Is that where you draw the line?

A. Yes; that is where I draw the line.

Q. You said something about the money being divided into four parts. Oh, that was in December; was it?

A. Yes, sir.

Q. When did you first tell anybody about this arrangement which you say was made with Mr. Holmes as to giving information—anybody outside of those interested?

A. I consulted my attorney about it in December.

Q. What date in December?

A. I could not swear to that.

Q. What do you say?

A. I could not swear as to the exact date.

Q. Was it before or after the division was made, as you say, of these profits which were made on the cotton report of December 3rd?

A. I think it was before.

Q. Before that?

A. Yes, sir. No; it was between the December 11th and the December 30th settlement.

123 Q. It was between the settlement that was made of the December 3rd business and what you call the ginners' report profits?

A. Yes, sir.

Q. Of course nobody can ask you what you said to your attorney

or what he said to you; but I might ask you why you went to a lawyer?

Mr. BAKER: I object to that.

The COURT: I think I will permit that.

A. Well, I went to see if there was any danger in doing business in this way.

By Mr. WORTHINGTON:

Q. Then after you had seen your lawyer, you went on with the business?

A. Yes, sir.

Q. When did you first tell anybody else besides your lawyer about this arrangement which you say was made with Mr. Holmes?

A. I think it was—do you mean the date or the party?

Q. I would like to know the person and the date and all about it.

A. Well, it was around June, just after the June 3rd report.

Q. Just after the cotton report of June 3rd, 1905?

A. Yes, sir.

Q. Who was it you told, and how did you come to tell him?

A. I talked it over with Mr. Judd, and may have talked it over with two or three others.

Q. You may have talked it over?

A. I think I talked it over with Mr. Taylor, my attorney, at that time.

Q. Who was Mr. Judd?

A. He was formerly in my employ at the New York Mailing and Advertising Agency. He was General Manager there for me—a sort of a confidential man.

(The Court thereupon took a recess until 1:15 o'clock p. m.)

124 After Recess.

L. C. VAN RIPER resumes the stand for further cross examination.

By Mr. WORTHINGTON:

Q. Before going on with what I was asking you about before recess, I want to see what you can tell us about how you made a loss of twenty or thirty thousand dollars in June, 1905. Was that because the Government Crop Report for June turned out to be different from what you had been advised, or because the market did not respond to it?

Mr. BAKER: I object to that because he did not testify that he lost that.

By Mr. WORTHINGTON:

Q. Didn't you say that in the June operation you lost twenty or thirty thousand dollars?

A. I said the trade showed a loss at that time.

Q. What did you mean by that?

A. I meant that if it had been closed out then it would have shown that loss.

Q. If you had closed out at the figure at which the market stood, after the Report was published, you would have lost twenty or thirty thousand dollars?

A. Yes, sir.

Q. Was that because the Crop Report turned out different from what you expected or because the market did not respond as you anticipated?

A. It was because Haas had told me to buy and he had then given me the wrong figures on the 31st of May. Then he had come down and seen Mr. Holmes at the instance of Mr. Price, and they had made the figures more bearish than he had reported they would be before.

Q. When did you first get information as to what the June report would be?

A. On May 31st.

Q. Did you buy or sell prior to May 31st?

A. I bought on May 31st, on Haas' calling me up from Baltimore.

Q. You did not buy any in May prior to that?

A. Not to my recollection. I was trading all the time more or less, but not on this.

Q. With what broker or brokers did you deal with reference to your purchase of cotton, after the 31st of May and up to the 3rd of June, 1905?

A. I was dealing with Hubbard Brothers and L. H. Mercer.

Q. And with those only?

A. I am not positive; but I think I also bought a little cotton in Liverpool. I am really not positive of that; at this time.

125 Q. What is that name?

A. In Liverpool.

Q. With this same firm in Liverpool?

A. No; with A. J. Bustin & Company.

Q. At that time you were carrying on business as a broker?

A. No, sir.

Q. Were you not, in 1905?

A. No, sir; I was running the New York Mailing and Advertising Agency.

Q. Then I have forgotten about the dates. You were carrying on business as a broker at some time in New York, were you not?

A. No, not as a broker.

Q. As a discretionary broker, then?

A. I never called it that. I was operating and speculating.

Q. You were sending out circulars while you were in New York, to different people?

A. Yes, sir.

Q. Stating that you would help them to make money in the market?

A. I was managing accounts at one time, in 1898, 1899 and 1900.

Q. Managing accounts?

A. Yes, sir.

Q. For these people to whom you would send circulars, and who would invest their money on your recommendation?

A. Yes.

Q. What I am trying to get at is whether you kept any books showing what your operations were; and how it happens you have only little slips of paper here instead of books?

A. I didn't keep any books of these accounts.

Q. Did you keep books at all?

A. Not of these speculations.

Q. Of any speculations?

A. No; I don't think I had any at that time.

Q. Did you keep books showing speculations in 1902?

A. No.

Q. In 1903?

A. No.

Q. In 1904?

A. No.

Q. In 1905?

A. No.

Q. You say "No at this time." At what time did you keep them?

A. I kept books when I had a large number of accounts.

Q. When was that?

A. From 1898 to 1900 I kept books.

Q. You have not anything, then, to show your transactions involved here, except these memoranda on little loose pieces of paper?

A. No, sir; except these statements of different brokers.

Q. Nothing that you kept yourself?

A. No, sir.

126 Q. Now I will go back to what I was asking you about when we took a recess. I was asking you how you came to disclose these proceedings and in which you had been engaged, and you told me you had spoken with Mr. Judd, and also with your lawyer. When was that?

A. That was after the June 3rd report.

Q. How soon after the June 3rd report?

A. Right away after—right after that.

Q. You mean June 4th or 5th?

A. It is possible it was that very day.

Q. What did you do besides speaking to Judd and to your lawyer about it?

A. Do you mean what I did or what Judd did?

Q. What did you do, or what did you get anybody to do, in the way of having this thing disclosed?

A. Mr. Judd wired for Richard Cheatam, of the Southern Cotton Association, and had him come to New York.

Q. Did he do that with your knowledge and your suggestion?

A. Yes, sir.

Did Cheatam come?

A. He did.

Q. What was done about it? Go on and tell the jury what was done. I want to find out what your motives were in telling this story to Mr. Holmes?

A. What do you want me to say?

Q. I want you to go on and tell all you did about disclosing this thing. It seems that it did come out, and I want to see if you had anything to do with its coming out, what you did and why you did it?

A. I showed Cheatam these letters and other letters, and told him about it, and he and Judd came down to see the Secretary.

Q. Secretary Wilson.

A. Yes, sir.

Q. When was that?

A. That was just as soon as Cheatam got up to New York.

Q. Was it early in June some time?

A. Yes, sir.

Q. What next happened, so far as you know?

A. The next thing they came back to New York and said that Mr. Wilson had given them a very cold shoulder, and that he practically told them he didn't believe any such report as that, and then they asked me to come down with them, so I came down with them.

Q. Can you fix the date when you did that?

A. I am not positive; but I think it was June 9th that I came down here.

Q. Now go on.

A. I saw Mr. Wilson and I told him about this manipulation of the June report, and he suspended Mr. Holmes.

Q. Did you give him any statement in writing?

A. No, sir; I don't think I did.

127 Q. You made an affidavit, did you not, Mr. Van Riper?

A. Yes, I think I did. I had forgotten that I had made an affidavit.

Q. Did you make that in New York or after you came down here?

A. I made it in New York.

Q. Did you do that before Mr. Cheatam and Mr. Judd came down here?

A. No, I did it when they came back here, if I remember correctly. I think they came back and asked for it.

Q. Did you go before a notary or any official and make oath to the paper?

A. Yes, sir.

Q. Before what officer or notary public?

A. I don't remember now. It was somebody over in that building at 63 Exchange Place, I think.

Q. When you came down here did you bring the affidavit with you?

A. I guess they brought that down when they came. I have forgotten exactly about that.

Q. You gave it to them to bring down here?

A. I guess that was the way that was done.

Q. You gave it to them and authorized them to give it to the Secretary?

A. I think so.

Q. Did you ever see it afterwards?

A. No, sir.

Mr. WORTHINGTON: Mr. Beach, I called upon Secretary Wilson for that paper and he says that he turned it over to you. I would like to have it.

Mr. BEACH: If we have it you can have it.

Mr. WORTHINGTON: You certainly know whether you have it or not.

Mr. BEACH: I would like to have a little more notice when you call for papers, Mr. Worthington. I have got a great many papers here. Mr. Adkins tells me that he cannot produce the paper but that he has got a copy of it.

Mr. WORTHINGTON: If you know, in the office, that it is a copy, it will do me just as well.

Mr. BEACH: We will have to look for it.

By Mr. WORTHINGTON:

Q. Have you ever seen that affidavit or what purported to be a copy of it, since you gave it to Mr. Cheatam or Mr. Judd to give the Secretary?

A. I don't remember that I ever have.

Q. When you came down here and saw the Secretary, did you tell him what you have told here?

A. Substantially.

Q. Substantially the whole story?

A. No, I didn't tell him all of it.

128 Q. What part did you tell him and what part did you keep back.

A. I didn't tell him very much.

Q. That does not help us a bit. I want to know what part you told him and what you did not?

A. I don't remember just what I told him. It was understood by me that I was to have a copy of the statement and have the right to correct it before it would be given out, and before anybody should see it; but I never have seen it since.

Q. You were to have a copy of the affidavit or a copy of the statement?

A. A copy of the shorthand notes that were taken.

Q. You went down to his office and made a statement and it was taken down by a shorthand writer?

A. Yes, sir.

Q. Who was present?

A. Mr. Cheatam, Secretary Wilson and myself and I think Mr. Walsh and the stenographer.

Q. Mr. Richard Cheatam, whose name appears on the back of the indictment we are trying, was the man you are speaking of?

A. Yes, sir.

Q. Do you know where he is now?

A. No, sir.

Q. It is well known that he is living; is it not?

Mr. BAKER: I object to that as being immaterial and being improper cross-examination.

The Court: It is simply used to identify the man, I suppose.

Mr. Worthington: It is more than that. I understand it is the duty of the District Attorney, if he can, to have present the witnesses who are on the back of the indictment.

Mr. Baker: I do not understand that to be the law at all.

The Court: We will not enter into a discussion of that question at present.

Mr. Worthington: I will have something to say about that later on. I now, however, formally request the District Attorney to have him here.

Mr. Beach: Mr. Worthington has been advised for the last ten days that we did not expect to call Mr. Cheatam.

The Court: You need not make any statement about that. The request of defendant's counsel will appear in the record, and that is all that is necessary.

By Mr. Worthington:

Q. When you were making this statement, these persons being present and the statement being taken down by a stenographer, did you, in substance, tell them that there had been an arrangement made between Mr. Holmes, Mr. Haas, Mr. Peckham and yourself to speculate in cotton, partly and largely upon information which Mr. Holmes was to give you?

129 A. I don't remember whether I did *not* not.

Q. Do you know whether you gave away this alleged conspiracy?

Mr. Baker: I object to that question. If they expect to contradict this witness by what he said before the Secretary they have a right to put a proper question to him; but to go into everything that he told the Secretary, without giving him the substance of what they allege he said to the Secretary, to my mind is immaterial.

Mr. Worthington: I submit, your Honor, that when the time comes that I offer to contradict him and I have laid the proper foundation, the question will arise. But I am now trying to get from this witness, with some difficulty, as your Honor will observe, whether or not at that time he disclosed the alleged crime, for the purpose of finding out when he disclosed it, and then finding out what his notice was, in order that the jury may have that before them in weighing his testimony.

The Court: I will permit this as a matter of discretion.

By Mr. Worthington:

Q. Do you remember whether you gave away this alleged conspiracy?

A. I don't think I told him anything about it.

Q. What did you go there for, then, Mr. Van Riper?

A. I went there to have the cotton report corrected, and to save myself from financial ruin. I felt that I had been thrown down by these people and left to hold the bag.

Q. You understood that Mr. Haas had given you incorrect information?

A. I understood that I was to buy cotton when he knew that Price was selling cotton right there, and then they came down and had these figures fixed to suit Price. Then he promised to put up his money and he didn't do it.

Q. You felt very much irritated towards Mr. Haas on that account?

A. I certainly felt very much irritated.

Q. Did you have any information or knowledge as to what Mr. Holmes had to do with that alleged betrayal of you?

A. Yes, sir. Mr. Haas told me that, in coming down on the train, he was going to see Mr. Holmes for Mr. Price as I have already testified. Then he told me he had seen him and there would be no change. Then on the morning of the report he called me up and told me the corrected figures, which were a change.

Q. Did you communicate with Mr. Holmes at all to find out whether Mr. Haas had told you the truth about him in that regard?

A. No, sir.

Q. And when you went to the Secretary's office you mentioned Mr. Holmes's name, I suppose, as well as that of Mr. Haas?

A. Yes, sir.

Q. What did you say to the Secretary about Mr. Holmes?

1130 A. I told the Secretary substantially the occurrence about this June report, in the way that the Bureau of Statistics was being used by Price.

Q. Did you tell him anything about the entire alleged transactions between you four?

A. I don't recall that I did.

Q. You confined your statement entirely to the alleged manipulation of the June report?

A. I must have told him something about the prior time, because I turned over these letters from Holmes to him at that time.

Q. You turned over these three letters you have testified here you received from Mr. Holmes?

A. Yes, sir.

Q. Running back as far as August, 1901?

A. Yes, sir.

Q. And in doing that you were influenced largely by the fact that you understood that he had helped Haas deceive you about the June figures?

A. I don't quite understand the question, Mr. Worthington.

Q. I say that in turning over these papers that you say are letters Mr. Holmes wrote to you, to the secretary, you were largely influenced by what you believed to be the fact that Mr. Holmes had been assisting Mr. Haas in deceiving you about the June figures.

A. He did not deceive me about it.

Q. I don't understand you then.

A. He gave me the figures, but they got me into the market wrong, and Haas didn't keep his part of the agreement.

Q. The figures then were exactly what you were told they would be?

A. On the morning of the report, yes, sir. But it was too late then to save myself from a big loss.

Q. At what time in the day did you get the figures of the June, 1907, report?

A. I think it was before 9 o'clock.

Q. You got it by telephone?

A. Yes, sir.

Q. From Haas?

A. Yes, sir.

Q. Who was then where?

A. I don't know where he was. It was evidently local, in New York.

Q. That is what I mean—that he was in New York, not in Washington.

A. Yes, sir.

Q. About the statement that was taken down by a stenographer—you never saw it afterwards?

A. I have never seen it.

Q. Did you ask or obtain from Secretary Wilson any promise in reference to keeping any part of what you were going to tell him from the public?

131 Mr. BAKER: I object to that as being immaterial.

The COURT: It may be admitted.

A. I understood the Secretary to say that what I gave him was in strict confidence, and I reserved the right to tell them as much as I wanted to, and not to answer any questions I didn't want to answer.

Q. Do you remember whether you asked and obtained from him any promise that a certain name or names would not be given out?

A. No, I don't think I went into that part.

Q. Are you quite clear about that?

A. I don't remember it.

Q. What?

A. I don't remember it.

Mr. WORTHINGTON: Have you got a copy of that affidavit?

Mr. ADKINS: No sir.

Mr. WORTHINGTON: Can't I get that this afternoon?

Mr. BEACH: Yes, sir; you can have anything you want if you will give us notice enough. We cannot leave the trial table to run around after papers.

By Mr. WORTHINGTON:

Q. You remember when the statement was published in the newspapers about what you were said to have told the Secretary, and about these letters being published in the newspapers. You remember that fact, do you not?

A. I do remember the newspapers having a story about it; yes.

Q. They had these letters, did they not?

A. They had some of them. I don't remember just what they had.

Q. After that was published, didn't you give to the public a statement of your own in reply to it?

A. Yes, sir.

Q. To whom did you make that statement or through whom did you communicate in giving it to the public.

A. I don't know who I gave it to. I gave it to a newspaper man I know.

Q. You saw it published in the newspapers the next day?

A. Yes sir.

Q. Was it correct?

A. So far as it went.

Q. I wish you would cast your eye over this clipping from the newspaper here, headed "Innocent of wrong, he says," and let me know whether that is the statement you are talking about (exhibiting paper to witness). Have you read the article?

A. Yes sir.

Q. After reading the article what do you say about the substance of it being correct?

A. Substantially it was.

Q. After you read it in the newspapers, did you do anything in the way of having any part of it corrected?

A. No sir.

132 Mr. WORTHINGTON: I propose to read this article to the witness and ask him certain questions about it.

Q. I omit the first paragraph which you see is a newspaper man's preliminary statement, and come down to where it says: Mr. Van Riper's statement is as follows:

"It came to my knowledge early in the year, without solicitation on my part, that plans were being laid to influence and manipulate the figures of the government report on cotton during the summer months, beginning with June."

Was that true, Mr. Van Riper?

A. Yes sir.

Q. How did it come to your knowledge, without any solicitation on your part?

A. They told me about it. I have already testified to the conversation.

Q. Had you done anything, prior to the beginning of the year 1905, to dissolve the contract or arrangement you say you had with these men before that, about cotton speculations?

A. You mean prior to the year 1905?

Q. Prior to the 1st of January, 1905 had you dissolved your arrangement with them; was it at an end?

A. Yes sir; we dissolved our arrangements on December 31st.

Q. How was it dissolved?

A. I have already testified that it was at the time this money was all taken down.

Q. Was it then agreed that you would abandon the business and would not go on with it any more?

A. We settled up to that time.

Q. I understand that; but you had had previous settlements, had you not?

A. Then it was arranged that we would form a pool to operate in June, but at that time nothing was said about manipulating the figures.

Q. When did you first hear about manipulating the figures?

A. The first intimation I had of it, as I recall now, was when Haas made his trip down to Washington.

Q. When was that?

A. After he had had his interview with Price at the Waldorf.

Q. That was in May?

A. That was on the 31st day of May.

Q. That was the first intimation that you had had of any attempt to manipulate the cotton crop report figures?

A. Yes, sir.

Q. The- how did it come that you said to the newspapers and through them to the public: "It came to my knowledge early in the year without solicitation on my part that plans were being made to influence and manipulate the government reports on cotton during the summer months, beginning in June?

A. Well, I considered May early in the year.

Q. You considered May early in the year?

A. Yes sir.

133 Q. And this was about along the 8th of July, when you were making this statement?

A. Yes, sir.

Q. Then you go on and say "It was planned by certain interest including parties in responsible positions in the Bureau of Statistics to use influence to have Mr. Hyde sent to Europe, so that Mr. Holmes would be the acting head of the Bureau, and in this position would have a free hand to furnish such reports as wanted."

What do you mean by "certain interest including parties in responsible positions in the bureau." You use the plural. I want to know to whom you referred?

A. Mr. Worthington, I don't say that is a correct statement that I gave. That is the newspaper report of it. I don't know that I made those exact statements. I was interviewed and talked to.

Q. Then I will have to ask you whether or not you made that statement as I have read it, to the newspaper man, for publication to the world in the City of New York on the 8th of July, 1905?

A. I don't remember exactly what I did say.

Q. After you saw this in print, did you do or say anything to correct it in that respect?

A. I don't recall that I did.

Q. You next say "I was also cognizant of the fact that said Holmes had previously furnished advance information to certain brokers, from time to time, and when their plans for manipulating and changing the cotton report figures were exposed to me I immediately consulted my attorney regarding the matter, and upon his advice listened to their stories and kept back of their plans, in some cases having witnesses unknown to them, until the June report on acreage and condition of cotton came out."

I have understood you to say that this was substantially correct. What do you say as to that?

A. I don't remember making that statement.

Q. There are a good many things stated there, and I will ask you about them one at a time:

"I was also cognizant of the fact that said Holmes had previously furnished advance information to certain brokers from time to time."

A. That was true, whether I said it or not. I couldn't say about that.

Q. What I am asking you is whether you said that, not whether it is true or not?

A. I couldn't say whether I said it or not. I had an interview with a reporter.

Q. What do you say about this: "When their plans for manipulating and changing the cotton report figures were exposed to me I immediately consulted my attorney regarding the matter."

Did you do that?

134 A. I don't think I stated it in those words. I may have. I did consult my attorney.

Q. Is that true?

A. I did consult my attorney.

Q. When was it that this exposure was made and you went back to see your lawyer about it?

A. The exposure was on *in* May 31st, when Haas came down to Washington.

Q. Then you went and told your lawyer?

A. I did. I had talked to him before about these matters.

Q. Who was your lawyer then?

A. Mr. Taylor, of the firm of Macfarland, Taylor and Costellor, 63 Wall Street. I also talked to Mr. J. W. Grangefield.

Q. Then when Mr. Haas told you, on or about the 31st day of May that the June report was to be manipulated down here, you went out and saw your lawyer at once; did you?

A. Yes, sir.

Q. Did you say you did.

A. I did.

Q. To see whether it would be all right?

A. For advice.

Q. For advice in the matter?

Q. Yes, sir.

Q. What did you understand by the suggestion of "manipulating the figures"? What did you, in your own mind, understand that to mean?

A. From what he said, I understood that he was coming down to get Holmes to change them.

Q. To get Holmes to change the figures?

A. Yes, sir; to suit Price.

Q. To alter the figures as the reports would show them and make them conform to what you folks wanted?

A. To either alter them or change the plans. As I understood it, the figures were not made up from any definite footing. They would merely take what figures, according to their own judgment, they thought it would be best to put out.

Q. Well, that he was going to make the figures to suit?

A. They wanted to be somewhere in conformity with the conditions, to avoid criticism. That was my understanding.

Mr. BAKER. Mr. Worthington used the expression "make the figures to suit you". There is no testimony to that effect.

Mr. BEACH: "To suit you folks."

Mr. BAKER: You could not include the witness in that statement because he has testified that the figures were mad- to suit Price.

By Mr. WORTHINGTON:

Q. The next statement here is that "after consulting my attorney and upon his advice, I listened to their stories and kept back of their plans, in some cases having witnesses unknown to them." Is that true?

135 A. I do not think I am reported correctly there.

Q. What do you say?

A. I do not think that that is quoted correctly.

Q. Was it the fact about the thing intimated there?

A. I consulted my attorneys.

Q. Did you, on the advice of your attorney, listen to the stories and just hear what they were saying and have somebody listening that they did not know about?

A. I do not remember that I had anyone listening.

Q. Did you tell the newspaper man or men to whom this statement was given that in some cases you had witnesses unknown to the people who were telling you about the manipulation?

A. I could not say, Mr. Worthington, what I told them, word for wor*f*, because it is too long ago.

Q. Can you tell us whether or not you in any wise intimated to them that you had somebody listening to what was going on, when as a matter of fact you had not?

A. I do not know.

Q. You do not know?

A. I do not know.

Q. The next thing is: "It was planned as early as March to use every effort they could to secure figures that would be as bearish as possible." Did you make that statement?

A. I have already testified to that, on Mr. Holmes' interviews with me and in my office in March, about March 8th. He told me this.

Q. What did Mr. Holmes say to you on that occasion that justified this statement?

A. He told me that he was on the way to visit the agents, some of the State agents or general agents, and was going to do everything he could to get a bearish report.

Q. Then you did make this statement, did you, to the newspaper man?

A. I do not say that I did.

Q. "It was planned as early as March to use every effort they could to secure figures that would be as bearish as possible"?

A. I do not say that I made it; I may have.

Q. Well, now, Mr. Van Riper, I understood you, after reading this clear through carefully, to say that it was substantially correct; did you not?

A. Substantially, I think, it is correct, of my knowledge at that time.

Q. Is it then, substantially correct that you said to them that it

was planned as early as March to use every effort they could to secure figures that would be as bearish as possible?

A. I may have said it, because I had had this talk with Holmes in March.

136 Q. "So as to break the price of cotton to a low point, where certain interests would make large profits on the short side, and then load up and made an enormous scoop on the long side." Did you say that to the newspaper *man?*

A. I may have.

Q. Well, you may have said anything, you know, of course, Mr. Van Riper. My question is whether you have any recollection now that you said anything like that?

A. Well, now, Mr. Worthington, how can I remember that I said all those particular things?

Q. Why, you have told us here about many conversations that happened long before that, and given the substance of them.

A. Yes, but i could not give them word for word. I say, substantially that is the statement I made.

Q. Very well.

A. Whether I made those particular——

Q. That is satisfactory, then. "It is understood that in some cases Government agents' reports would be influenced in that direction, or even fictitious reports used." Did you tell the newspaper man that, substantially? I am not talking about words, but about substance.

A. I probably did.

Q. What was the foundation for your making that statement to the public and to the newspaper man, and through him to the world?

A. Talks I had had with Haas and Holmes.

Q. You have not told us anything about fictitious reports, as I remember.

A. I don't know as I ever used that word.

Q. This says that "it was understood that in some cases Government agents' reports would be influenced." Did you say that in substance?

A. I don't know.

Q. You do not know. As a matter of fact, had you had any intimation that any of the Government agents were to be influenced to make their reports?

A. Mr. Holmes told me he was going to visit Government agents.

Q. And use every effort he could to get a bearish report?

A. To get a bearish report; yes, sir.

Q. And you were to go in upon that statement and buy cotton; or was he just telling you this as a matter of news, without any reference to future dealings?

A. He was telling me this with reference to future operations.

Q. So that you could buy, and after the bearish report came out——

A. Mr. Haas was to keep me posted.

Q. Well, I say, was that understood between you and him? He told you that he was going to do everything he could to get a bearish

report, and then you were to buy cotton and give him a part of the profit that you would make when you would sell out?

137 Mr. BAKER: I object to the question because it is not intelligible. You would not buy a bearish report to make money.

Mr. WORTHINGTON: That is just another instance of how little I know about these things that Brother Baker is so familiar with, your Honor.

The COURT: It might not be a legal objection to the question.

By Mr. WORTHINGTON:

Q. Do you understand the question, Mr. Van Riper? It does not make any difference whether the District Attorney does or not if you do.

Mr. BEACH: Might we have the question read?

The COURT: You may read the question.

Mr. WORTHINGTON: I will withdraw the question.

The COURT: Mr. Worthington desires to put another question. I understand. This is withdrawn.

Mr. BEACH: Very well.

By Mr. WORTHINGTON:

Q. Was there anything said between you and Mr. Holmes when you had that conversation of March, 1905, about how he or you were to benefit in any wise from this bearish report that he was going to bring about?

A. No; not at that time.

Q. Was anything said about it before?

A. I have already testified that Mr. Haas agreed to form a pool and put up $20,000 for operations. It was very natural that he and Holmes would come in and see me when they were in town, and he did frequently, or Mr. Haas did frequently.

Q. Did you yourself, in any conversation with Mr. Holmes, say anything or hear anything from him about this $20,000 arrangement?

A. This was said in his presence when it was originally planned.

Q. Oh, I see! Then you understood that when he was talking to you in March it was carrying out that same arrangement?

A. I understood that he was to when the time came to operate.

Q. Well, he was telling you in March that he was going down to the cotton region and was going to do what he could to bring about the result that he wanted?

A. Yes, and to get what information he could.

Q. Well, to do what he could to bring about a bearish report, did you not say?

A. That was what he had talked of prior to that.

Q. And you understood that that was carrying out the scheme you had previously entered into of forming a pool to operate on June cotton?

A. It was in connection with it.

Q. Yes. "On June 1st", this goes up. "I was informed
138 that it was impossible to get the condition higher than 75 per cent, and the acreage reduction to show a decrease of less than 13 per cent. in spite of all they had tried to do." That is what you told us now, I understand?

A. I told you substantially that; yes.

Q. Was it June 1st or May 31st?

A. The night of May 31st or the afternoon.

Q. "But that at the request of a certain large market operator the go-between was going back to Washington that night to try and have the figures stretched a little further." Did you make that statement to the newspaper man, in substance?

A. I don't know whether I made it but it is true.

Q. Do you remember——

A. I do not remember making that statement.

Q. Do you remember anything you said to the newspaper man on the occasion I am asking you about?

A. Yes; I remember being interviewed.

Q. Do you remember anything you said in the interview?

A. Not word for word; no.

Q. Do you remember the substance of anything you said at that interview?

A. Yes; I say that substantially is correct.

Q. What do you mean by saying it is substantially correct? I understand you to say there was nothing said to the newspaper men about fictitious reports.

A. I do not recall saying it.

Q. Then it is not substantially correct in that particular?

A. I do not think that is substantially material.

Q. Oh, you think that is substantially immaterial about getting in fictitious reports?

A. The word "fictitious," the way you use it here, I don't recall using it.

Q. I will skip the next paragraph there. It says: "The notoriety attached to this matter is far from agreeable to me, and I was personally assured by Secretary Wilson that in bringing this matter to his attention I had done the Department a great service, and that my name would not be mentioned in any way." Did Secretary Wilson make that promise to you?

Mr. BAKER. I object to that. He has been asked that question already and answered it.

The COURT. He may be asked it now, in view of this statement which he has said is substantially correct.

A. Mr. Wilson—that was my understanding, that he was not to use it in any way.

By Mr. WORTHINGTON:

Q. Is it not your recollection that that is what he said to you, that your name would — be given out?

A. That was my recollection; yes, sir.

Q. Yes. Now, this goes on: "Now that he has seen fit to publish

or to give out for publication certain letters and documents that were entrusted to him confidentially, I think it is only fair to ask
1139 him to give for publication my entire statement made to him of which the above is a part, but which has been omitted in newspaper accounts which have been called to my attention."

Did you say that substantially to the newspaper man?

A. I probably did. It was true.

Q. What do you mean by saying you "had entrusted these papers to Secretary Wilson confidentially?"

A. I meant that my understanding was that it was to be treated confidentially.

Q. Is it your recollection that he stated to you that he would treat them as a confidential matter between you and him?

A. It was.

Q. Who was present when he made that promise?

Mr. BAKER: I object to —. That question does not warrant the statement of a promise.

The COURT: Suppose you adopt his own language in your question, as objection is made.

Mr. WORTHINGTON: I was trying to get it substantially the same, your Honor.

The COURT: Ask what he said and what he did about it and who was present; that is the question.

By Mr. WORTHINGTON:

Q. You say it is your recollection that he said he would treat this as a confidential matter between you and him?

A. Yes, sir.

Q. Who was present when he made that statement?

A. I think all these people that I told you were there.

Q. Mr. Cheatam?

A. I think so.

Q. Mr. Judd?

A. Mr. Judd was not present.

Q. Oh, Mr. Judd was not there on that occasion?

A. No, sir.

Q. Who were there besides Secretary Wilson and Mr. Cheatem and yourself?

A. Well, I do not know whether they were in the room when I first talked with him. When I reduced the questions and answers to writing Mr. Cheatam and Mr. Walsh and Secretary Willson and the stenographer were present.

Q. Was the stenographer a lady or a man?

A. A man.

Q. Do you know who it was?

A. No, I do not.

Q. Now, I will go on with this:

"From what I know of their various conversations and the plans which were laid months in advance. I believe that a thorough investigation of the Bureau would show that the real acreage reduction was from 18 to 25 per cent, and not 11½, as announced on

June 3rd. I would suggest or ask that a further statement
140 be made or asked for from the Agricultural Department as to what they found by investigating the records of said Bureau."

Did you make that suggestion in substance?

A. Substantially; yes.

Q. And you made this statement in substance to the newspaper man?

A. Substantially.

Q. Now, you say you had not closed out the deals that you had made. You had been buying cotton prior to June 3rd, I understand, with a view of selling it when the bearish report sent it down?

A. Yes, sir.

Q. And the market went the other way?

A. Yes, sir.

Q. And you stood a great loss?

A. Yes, sir.

Q. Unless cotton should go down in the near future?

A. If cotton had continued to go down I stood for a great loss.

Q. What do you say?

A. If it had continued to go down.

Q. If it had continued to go down there would be a big loss?

A. Yes, sir.

Q. And if the figures could have been seen to have been wrong and could have been made what you suggest here, 18 to 25, per cent reduction instead of 11½ in the acreage, it would have been very much to your personal advantage; would it not?

A. Yes, sir; it would.

Q. About how much difference would it have made to you? About how many thousand dollars, in the way you were then?

A. I could not tell that.

Q. You cannot approximate it?

A. I have no way to approximate it, because you can't tell what the market might do.

Q. And you could not tell, if the reduction in acreage had been announced to be 25 per cent instead of 11½, just how many thousand dollars you would have made out of it?

A. No, sir.

Q. I call your attention to this next paragraph, the last *bone* of this clipping:

"My attorney and others will back me up in the statement that I had nothing to do with the plans made by those parties to manipulate the Government figures, but merely on legal advice, and in the hope of doing a great public service, followed the plan as outlined and advised by my attorney, and at the proper time took such measures as I deemed right and just to the cotton trade and to the Agricultural Department."

111 Did you make that statement to the newspaper man, in substance?

A. I don't remember saying it word for word.

Q. Oh, well, now, Mr. Van Riper, you understand the difference between "word for word" and "substantially." I am not asking you

about any exact language. Did you in substance tell the newspaper man on this occasion that you had been acting in this business from public-spirited motives, to do the public a service, instead of to put money in your pocket?

A. I did do the public a service.

Q. That is not what I am asking you.

A. Yes, sir; I told them I had done the public a service, and Secretary Wilson told me so.

Q. I am asking you whether you told the newspaper men in substance, to go out to the world, that in this business about the manipulation of the June report, and everything connected with it, you were only trying to do a great public service?

A. I told them I was trying to do a great public service.

Q. As a matter of fact, you were trying to make money yourself until you found out, as you thought, that you had been "sold out"?

A. I was trying to do both. I was trying to save myself from ruin and trying to correct the evil—two motives.

Q. If the report had come out the way you expected, and the market had gone the right way, and you made a lot, you would not have said anything about it; would you?

A. I don't know now what I might have done then.

Q. You had not any expectation, up to the time that you found there was a loss, of giving anything out; had you?

A. I can't tell now what my thoughts were then.

Q. You cannot tell whether you had or not? Very well. At all events, when you went down there you felt pretty vindictive towards Mr. Holmes, did you not?

A. No, sir.

Q. Or to Mr. Haas?

A. I did not feel very friendly to Mr. Haas.

Q. And you had no feeling at all against Mr. Holmes?

A. Not personally.

Q. Have you not told us just now that you had understood from Mr. Haas that what was done about this, what he told you, he got from Mr. Holmes?

A. I considered that Holmes was merely a tool of Haas and Price.

Q. Only a tool of Haas and Price?

A. Yes, sir.

Q. Did you have more than one interview with the Secretary about this matter in July, 1905?

A. No, sir.

142 Q. That interview occurred down in the Secretary's office, I presume?

A. Yes, sir.

Q. In the Department of Agriculture?

A. Yes, sir.

Q. I will ask you whether or not at that time you asked him to refrain from publishing certain names, on the ground that if the names were given out it might subject you to personal violence?

A. I may have.

Q. What is your recollection about it, if you have any?

A. I don't recollect positively whether I did or not.

Q. Not positively? What is your best recollection on the subject?

A. My best recollection is that I was given to understand that none of it would be published.

Q. That is not the point I am addressing myself to, now Mr. Van Riper. I want to know whether you referred, in substance, to anticipated personal violence to you if something was published that you wanted kept out?

A. I never had any fear of personal violence from anybody.

Q. That is not the question either. The question is whether you told the Secretary that you wanted names kept back because of your fear of personal violence?

A. I don't recall that I did.

Q. Will you say positively that you did not?

A. No; I can't say positively, but I don't recall telling him that.

Q. When, as a matter of fact, did you close out those June deals in cotton—June, 1905?

A. I could not say positively as to dates.

Q. Did you hear anything further from Mr. Holmes after you saw him in March, 1905, as to where he had gone on this projected trip to the cotton States which you told us about, and what he did?

A. Not directly; I mean, not personally. I don't think I met Mr. Holmes after that.

Q. Did you indirectly?

A. I heard through Haas.

Q. What did Haas tell you about it?

A. Oh, he was in the office frequently. He would come in and talk over things generally; nothing special.

Q. What I am asking you about, Mr. Van Riper, is what information you had as to Mr. Holmes going down south that spring or going down to the cotton regions to try and influence that report and make it bearish.

A. The next thing that Haas told me was that they had arranged or gotten Mr. Hyde appointed to go to Europe.

Q. That is not what I am asking you about. Mr. Van Riper. You have told us that in March Mr. Holmes told you he was going down to where these agents were investigating cotton matters, and going to do what he could to bring about a bearish report. I
143 am asking you whether, at that time, directly or indirectly, you learned that he had gone down there doing anything?

A. I don't remember any special conversations on that particular point.

Q. You do not recollect that Mr. Haas ever told you that Mr. Holmes had gone down there or was down there?

A. I don't remember about that.

Q. And you do not know whether, as a matter of fact, he went near any of those cotton-growing regions during that spring?

A. No sir.

Q. Were your dealings in cotton after August, 1904, down to June, 1905, confined exclusively to the deals which you were making on behalf of the combination you have told us about?

A. No; not exclusively; principally so.

Q. Principally so?

A. Yes sir.

Q. You were speculating in cotton on your own account?

A. I may have been. I have always been a speculator for twenty-five years.

Q. You have always been a speculator in cotton?

A. Cotton, grain and stocks.

Q. For how many years had you been speculating in cotton without any reference to this combination you have told us about?

A. Oh, I guess for ten or twelve years.

Q. And during the last half of 1904 and the first half of 1905 you were speculating in cotton from time to time on your own account?

A. Very little, if I did, outside of this.

Q. Did you not have some very considerable deals in January, 1905?

A. Oh, yes, I did; yes, sir.

Q. Was that on your own account or on the joint account?

A. It was all on my own account.

Q. On your own account?

A. Yes, sir.

Q. Do you remember whether you were buying or selling then, or both?

A. Both.

Q. You had to do both to make anything, I suppose?

A. Yes, sir.

Q. On what information were you speculating then?

A. On my judgment.

Q. You did not get it out of your own head, I presume?

A. Well, yes; I formed my own conclusions about the market.

Q. You would draw your own conclusions from other things would you not?

A. Yes, sir.

Q. What were those things? Where did you get your in-
144 formation the points from which you gauged your speculations?

A. It is hard to tell now, Mr. Worthington.

Q. It was such that it was satisfactory to your mind, anyhow to make the venture you did?

A. Yes, sir.

Q. Might I ask whether you were successful or unsuccessful in your operations that month?

A. I was both; I made and lost money in both.

Q. I mean in the whole.

A. I don't recall positively. I think I lost some money though. I am not real sure.

Q. You cannot tell us surely whether you did or not?

A. I don't remember.

Q. Now about this first meeting that you had with Mr. Holmes, which I think you said was on the 7th of August, 1904—is that right?

A. Yes, sir.

Q. What division do you say was then agreed upon?
A. I agreed to give Peckham two-thirds of the profits.
Q. What was said about Haas and Holmes?
A. Haas's name at that time had never been mentioned, although they told me that there was a party that carried the information back and forth to Price.
Q. Well, Mr. Holmes was there?
A. Yes, sir.
Q. Was anything said or intimated as to whether or not he was to have any benefit from this arrangement—pecuniary benefit?
A. No, sir.
Q. So that as far as you were able to tell us, that whole two-thirds was to go to Peckham and be his?
A. Yes, sir.
Q. Was there anything that took place to affect that matter in your knowledge until the 11th of December following?
A. Yes, sir.
Q. What was it?
A. Bring Haas into it.
Q. I beg pardon?
A. Introducing Haas to me.
Q. When was it that that happened? I have forgotten the date.
A. It was about October; somewhere early in October.
Q. And that was at the New Willard?
A. Yes, sir.
Q. You were all four there then?
A. Yes, sir.
Q. What was said then about dividing profits?
A. I agreed to give Haas three-quarters.
Q. You agreed to give Haas three-quarters?
A. Yes, sir.
Q. And you would keep the other quarter?
A. I would give Peckham a quarter, and I was—I mean, excuse me—to give Haas half, Peckham a quarter and retain one-
115 quarter myself.
Q. What about Holmes?
A. Mr. Haas was the only one considered; Mr. Holmes was not.
Q. I beg pardon?
A. Mr. Haas go half, and Peckham a quarter and myself a quarter.
Q. I am asking you about Holmes?
A. I don't know.
Q. Well, I say, was anything said or intimated?
A. No, sir.
Q. (Continuing:) At that time, about Holmes getting any of it?
A. No, sir.
Q. So that so far as you have any knowledge or direct intimation, there was no understanding that he was to get any part of that?
A. No, sir.
Q. I ask you, when were you first informed that Mr. Holmes expected to participate in the profits of these speculations?

A. When I saw Haas pay him money was the first I had positive knowledge of it.

Q. That was on the 11th or 12th of December?

A. Yes, sir.

Q. What, if anything, was said at that time as to why Haas was paying him the money?

A. I don't think there was any explanation given.

Q. Nothing was said about it?

A. No explanation.

Q. Well, I do not know whether you draw a distinction between "Explanation" and something else.

A. I didn't care what Haas did with the money. I didn't care for any explanation.

Q. I am not asking whether you cared about it or not, but whether anything was said at that time—I do not mean directly, but whether anything was said or any intimation given that Mr. Holmes was to get anything of what Mr. Haas was receiving?

A. I don't recall that anything was said about it.

Q. Was there any time after that when it came to your knowledge that Mr. Holmes was expecting to receive any part of the proceeds of these deals?

A. Do you mean before he received them?

Q. Before or after; any time?

A. Well, the only thing I saw on this occasion was that I saw Holmes write his name in that trust agreement.

Q. You saw what?

A. I saw Holmes write his name in the body of the trust agreement.

Q. That was in the latter part of December?

A. That was at this time; this was between the 11th and the 13th of December.

146 Mr. WORTHINGTON: Oh, I beg your pardon; I thought that was later. Let me see that trust agreement—the one Mr. Holmes' name is written in, please.

(A paper was produced and handed to Mr. Worthington.)

By Mr. WORTHINGTON:

Q. That, on the face of it, refers to dividing the profits of a firm?

A. Yes, sir.

Q. A firm of brokers?

A. Yes, sir.

Q. Let us read this and see what it is. "I hereby certify" signed by Haas—"that I have this day entered into an agreement with one Frederick A. Peckham, wherein I have contributed to said Peckham the sum of Twelve Thousand Five Hundred Dollars ($12,500) towards the capital to be furnished by him for certain co-partnership agreement which he has entered into under date of December 13, 1904."

That is the partnership agreement of the firm of Mercer, Peckham & Company, or Peckham, Mercer & Company?

A. Yes, sir.

Q. Which we have heard read here?

A. Yes, sir.

Q. And which in the face of it is a partnership to carry on an ordinary brokerage business?

A. Yes, sir.

Q. (Reading.) "And that I hold from said Peckham certain agreement entitling me to the return of said Twelve Thousand Five Hundred Dollars ($12,500) from the first profits accruing, and to further interest in the profits of said business equivalent to two-fifths of the total net profits. Now, therefore, this agreement witnesseth that Edwin S. Holmes, Jr., has contributed one-half of said Twelve Thousand Five Hundred Dollars ($12,500) and is to receive one-half of all profits which I myself may receive from time to time on account of said agreement with Peckham."

Did you hear anything said, when Mr. Holmes was present indicating that the partnership agreement and this agreement were a mere sham to cover the dealings which you were expecting to make in cotton, based upon information you were going to get about the crop reports?

A. What do you mean by a mere sham?

Q. Perhaps I have misunderstood you; I beg your pardon, Mr. Van Riper. My recollection is that you said that this partnership agreement forming that firm—that the firm was formed just for the purpose of carrying on these deals.

A. It was formed principally for convenience.

Q. Just explain what you mean by that.

A. Well, for instance, so that I could operate without having everybody in the street know that I was trading in large quantities of cotton. I could place my orders through this firm, and they could distribute them to other brokers and the other brokers would not know who the customer was.

147 Q. Was the firm organized to do nothing except to attend to that business?

A. Just a general commission business.

Q. It was to do a general commission business?

A. Yes, sir.

Q. It was not to confine its operations, then——

A. Not at all.

Q. (Continuing:) Simply to this business of buying or selling cotton?

A. Not at all.

Q. Nor your alleged combination?

A. No, sir.

Q. It was, then, so far as that was concerned, an honest concern?

A. Absolutely.

Q. That brings me, then, to this: Were you present when anything was said to Mr. Holmes to the effect that this firm was to be used as a convenient method of carrying out your purchases and sales under the arrangement with him?

A. We were all present when we talked about organizing this

brokerage firm for convenience, and the reasons for it were talked about.

Q. That was all talked about in his presence?

A. Yes, sir.

Q. When was that?

A. Well, at this time and a day or two before; I think the 11th of December, when he came up there.

Q. Was the money put up which the persons who were interested in this firm agreed to put up?

A. Yes, sir.

Q. Did Mr. Haas put up his $25,000?

148 A. No, sir.

Q. Or his $12,500?

A. I put it up for him?

Q. You put it up for him?

A. Yes, sir.

Q. Did he account to you for it?

A. Out of the profits of the deal?

Q. And you have any personal knowledge as to whether Mr. Holmes arranged with him about the half of it?

A. None except that after Mr. Holmes put his name in that and Haas signed it, and I witnessed it, Haas turned around and folded it up and gave it to Mr. Holmes.

Q. Haas did what?

A. Folded it up and handed it to Mr. Holmes to keep.

Q. You said something about its being destroyed and thrown in the waste basket.

A. Yes, sir.

Q. When was that?

A. On December 31st.

Q. And where?

A. In my office, 108 Fulton Street.

Q. Who was there?

A. Mr. Haas and I think his brother-in-law, Tyrola.

Q. Mr. Haas and whom?

A. A fellow named Tyrola, Mr. Haas' brother-in-law.

Q. How did it come to be torn up?

A. Why the day before Mr. Holmes and Mr. Peckham were at the office, and I then gave Haas as I have already testified, $25,000, which he paid Holmes, and gave him a check for $8,525, which was one-quarter of the cost of the membership; and Mr. Haas asked Mr. Holmes then for this document, and Mr. Holmes said it was uptown and he would have to get it. So I did not settle with Haas the balance, then, until the next day. Haas says: "I will get that trust agreement and bring it down." So the next day he and Tyrola came in the office and brought this with them, with his own personal agreement, and I gave them the check for the thirty eight thousand and some odd dollars which I have explained here. He then handed this paper to me and I tore it up and threw it in the waste basket.

Q. How did it get out of the waste basket into our presence here.

A. After he had gone away I called one of the clerks of my office

and told him to take it up and have it pasted together and put in the safe. Which he did.

Q. What did you do that for?

A. Because I didn't like the way Haas had acted and I was a little suspicious that he might try to do something that was not right with me.

Q. In what way? What had Haas done that you were dissatisfied with up to that time?

A. Well he had complained because I did not trade heavier on the December report.

Q. Because you did not what?

149 A. Because I did not trade heavier; I was not making money enough for him, and he got mad the night we talked about this, the night we went up to meet him and Holmes in the Breslin Hotel and the time they said they wanted to draw their money out. I told him if he took his share of the $75,000, they had better close up their interest in the business too.

Q. Mr. Holmes was not present when the paper was torn up?

A. No, sir.

Q. Do you know whether he was in town, in New York that day?

A. I do not.

Q. When was it that Mr. Haas went away and said he would get the paper?

A. December 30th.

Q. And when did he bring it?

A. December 31st.

Q. At what hour on December 30th did he say he would get it?

A. I could not swear to the hour, but I am pretty sure it was in the forenoon.

Q. What time the next day did he have it?

A. He brought it around three or four o'clock.

Q. What was the day of the destruction of the paper?

A. December 31st.

Q. Did you not testify that you paid money to Mr. Holmes when he was there on the 30th and 31st both.

A. No, sir.

Q. You did not?

A. I did not intend to.

Q. You came over here, you said, I think, on the 9th of August to get those figures about the wheat report, of the next day?

A. Yes sir.

Q. What time did you get here that day?

A. Somewhere around four o'clock.

Q. And what time did you leave to return to New York?

A. I am not positive what train I took home.

Q. You went back that night?

A. Yes, sir.

Q. And you did not register at any hotel then?

A. No, sir.

Q. Do you remember anybody that you saw here on that trip except Mr. Holmes?

A. No, sir.

Q. You have no means you can give us by which we can ascertain *that* you were that afternoon?

A. No, I have no.

Q. Were you living at home or stopping at a hotel in New York at that time?

A. I was living at home.

Q. Where did you live by the way?

A. I lived on Riverside Drive.

150 Q. You got back to New York, then on the morning of August 10th?

A. Yes sir.

Q. Where did you go when you got back to New York first?

A. I don't recall; I probably went to my office.

Q. Where is your office?

A. 108 Fulton Street.

Q. What is the number?

A. 108 Fulton Street.

Q. Fulton?

A. Fulton Street.

Q. That is pretty well down on the Island. How many squares is that from Wall Street?

A. Oh, four or five, I guess.

Q. Four or five blocks. What time did you get to your office?

A. Well, now, I am not positive that I went there; but I assume I did. I usually got there around nine o'clock.

Q. I would like to know about your movements the next day, if you have any recollection of them.

A. I am not sure what I did in the morning. I know I was up to Gates' office at the Waldorf.

Q. What time did you get there?

A. Oh, I was there most all day.

Q. Then you did not go to your office?

A. I wouldn't say positively whether I did or not, but I think I did.

Q. You say you think you were there most all day?

A. Yes sir.

Q. What do you mean by that? What time did you go there?

A. Well, the day does not commence, really, in a broker's office until ten o'clock.

Q. Were you there at ten o'clock?

A. I could not swear positively.

Q. What is your best recollection as to when you got there?

A. I don't know.

Q. Have you any recollection about it?

A. No; not as to the exact time I got to the office.

Q. Can you approximate it at all? Was it before luncheon or after?

A. Oh, I was there in the forenoon. I know I was there in the forenoon, and I was there in the afternoon.

Q. Did you stay there until the afternoon, or did you go away and come back?

A. I think I stayed there.

Q. What were you staying there for?

A. Watching the market.

Q. And what time of the day was it that you made this memorandum for Mr. Rogers?

A. It was somewheres around three o'clock in the afternoon.

Q. You have told us about the figures you put down. You sealed them up in an envelope?

A. Yes, sir.

Q. You did not let Mr. Rogers see what they were, or anybody else?

151 A. No sir.

Q. And then what did you do with the envelope?

A. I don't know what he did with it, but I asked him to put it in the safe.

Q. What did you tell him to put it in the safe for?

A. I did not make any explanations.

Q. I do not ask you whether you made any explanations, but I am asking you to give us one.

A. I asked him to keep it for me.

Q. The cotton crop report would be out in a little while, would it not, that day?

Mr. BAKER: No; this was the wheat report.

Mr. WORTHINGTON: Wheat, I mean.

A. It was due at four o'clock.

By Mr. WORTHINGTON:

Q. And you gave it to him about three o'clock and told him to put it in his safe?

A. Yes sir.

Q. And keep it there until four o'clock?

A. No; I told him to keep it; I didn't tell him what for, then.

Q. Well, your object was so that when the crop report came out that day it could be verified, and you could show him that you knew what you were talking about?

A. Yes, sir.

Q. And you knew that would be there about four o'clock or a few minutes after?

A. Yes sir.

Q. And you told him at three o'clock to put it in his safe?

A. Yes sir.

Q. You are quite sure you told him to put it in the safe?

A. Yes sir.

Q. How do you now come to remember that, Mr. Riper?

A. I remember writing the note and asking him to put the time of day on it and the date and keep it for me.

Q. What was your object in letting a man who seems to have had nothing to do with this arrangement know that you were in a position to get information about the crop report in advance of its publication?

A. Well, at that time I don't know that I had any particular

object, except that I might have wanted to show him in order to help my credit with the firm, and for the purpose of having him know that I knew what I was doing.

Q. Well, Mr. Rogers was not advised how you were getting the information?

A. Not at that time.

Q. Dis you ask him to pledge himself to secrecy?

152 A. Yes, sir; I did later when I showed him. I did not at this time because he did not know what was in the envelope.

Q. When you opened it and showed it to him you pledged him not to let anybody know?

A. I did, yes, sir.

Q. And was that all he had to do with this business?

A. Yes, sir.

Q. And you did that and ran the risk of his making it known?

A. I knew Mr. Rogers very well and I had absolute confidence in him.

Q. When was it that the paper was taken out, the envelope opened?

A. It was after the newspaper reports of the report were published.

Q. The same afternoon?

A. No, I think it was the next day.

Q. Did you not tell us that you stayed there until the report came out?

A. Yes, sir.

Q. And when the report came out you did not then call his attention to it?

A. I don't think I did that day.

Q. Why did you wait?

A. Well, I don't know.

Q. How long did you wait?

A. In fact, when I gave it to him I didn't know whether I ever would show him what was in it. I merely wanted him to hold it for me.

Q. How long did you wait before you did open the envelope and get it out and show it to him?

A. Well, I don't remember; but I know that after the reports were published and they showed the exact figures and they showed this comment on spring wheat damage, I took one of those newspaper reports and had him open the envelope and compare the reading of the note with the published report.

Mr. WORTHINGTON: Let me see those checks of Mr. Van Riper's, please.

Mr. ADKINS: Which ones?

Mr. WORTHINGTON: His checks.

(The papers referred to were handed to Mr. Worthington).

Mr. WORTHINGTON: Gentlemen, I would like very much to have that affidavit or that copy of it before this session is over.

Mr. BEACH: I am afraid we cannot accommodate you, sir, until the morning.

153 Mr. WORTHINGTON: In the morning? I say, I would like very much to have it at this session.

Mr. BEACH: Well, we will not promise you to do so at this session when we cannot.

Mr. WORTHINGTON: May it please your Honor, I would like to suspend the examination of the witness in order that I may put on somebody from the District Attorney's office and find out where that affidavit is, and get it. I wish to use it in cross-examination of this witness today.

The COURT: I do not think the situation is such that the Court should make any order about it now. Is there nothing else that you want to ask this witness?

Mr. WORTHINGTON: Oh, yes; there are quite a number of things, your Honor; but I wish to ask him about that affidavit today, before he has an opportunity to go over night.

Mr. BEACH: I think that is very uncalled for.

The COURT: I do not know that I can make any order about it. You did not give notice to the counsel for the Government until you came in this afternoon. If you had given it before——

Mr. BEACH: Under that assertion Mr. Worthington can resort to the best means he has of getting that affidavit. I had intended to accommodate him at the next session of the Court; but in view of that assertion he must get that affidavit the best way he can.

The COURT: We will not have any personal comments about it. The matter addresses itself to me simply as a matter of legal duty on my part; and unless some reason is given me which does not occur to me now, I do not see how I can order anything about it.

Mr. WORTHINGTON: I have not any reason, your Honor, except that the attention of this witness has been called to that affidavit, which may be important, and might be a decisive feature of this case; and I submit that we ought to be able, if possible, to examine the witness about it now, before he has had any time to consider further about the matter.

The COURT: I will hold that I have no authority to compel its production at this time.

151 Mr. WORTHINGTON: I am not asking your Honor to compel its production. I am asking you to allow the witness to stand aside to allow me to call another witness.

The COURT: Oh, that may be done.

Mr. WORTHINGTON: That is all I ask. Just step aside, Mr. Van Riper. Mr. Beach I will call you to the stand.

(The examination of the witness Van Riper was thereupon temporarily suspended.)

LEWIS C. VAN RIPER, the witness whose examination was suspended as heretofore stated, thereupon resumed the witness-stand, and his cross-examination was continued, as follows:

By Mr. WORTHINGTON:

Q. Do you usually carry your check book around with you when you travel, Mr. Van Riper?

A. Yes, sir.

Q. Do you keep your check-books?

A. No sir.

Q. You do not keep any of them? I mean, the stubs?

A. I do not keep them very long.

Q. Are you in the habit of putting on your stubs a memorandum when you draw a check?

A. Not always.

Q. I am *not* asking for your habit?

A. No, I am not. I do not usually post them up.

Q. You do not usually what?

A. I do not usually post up the stubs.

A. I do not know what you mean by that; but when you write a check you are not in the habit of writing in the stub what it is?

A. No, sir.

Q. Do you keep any account to show how your money has gone?

A. I keep it in my own mind, generally—my personal account.

Q. You just keep it in your own mind?

A. Yes, sir.

Q. And you do not have your stubs back even as far as 1904?

A. No, sir.

Q. You cannot produce any check-book, then, from which this Exhibit 24 is torn?

A. No, sir.

Q. Have you exhibited this paper to anybody since you say it was made—this Exhibit 24? It is a memorandum, I under-
155 stand, that you say you made here on the night of August 9th, 1904.

A. I have shown it to Mr. Beach and Mr. Adkins.

Q. Well, you have shown it to Mr. Beach and Mr. Adkins; but —ask you whether you have shown it to anybody before you showed it to the representatives of the Government?

A. I do not think I did.

Q. When did you first show it to anyone?

A. I think I showed it to Mr. Braintree first.

Q. Mr. Braintree?

A. My attorney; yes, sir.

Q. When was that?

A. I think it was in July, 1905—somewheres along there.

Q. That was about a year after the transaction which you say it represents?

A. Yes, sir.

Q. You say, I understand, that it was made in July, 1904?

A. Yes sir.

Mr. ADKINS: August, he said.

Mr. WORTHINGTON: I beg your pardon—August, 1904; August 9th?

The WITNESS: Yes, sir.

By Mr. WORTHINGTON:

Q. And that no other person ever saw it until July, 1908, as far as you can tell us?

A. I do not recall having shown it to anybody.

Q. After you showed it to Mr. Braintree—is that his name?
A. Yes, sir.
Q. In July of 1905 to whom did you next exhibit it?
A. I think Mr. Braintree sent it to Mr. Beach.
Q. In the summer of 1908?
A. Somewhere along there.
Q. What part of the check book was this torn from?
A. The fly-leaf.
Q. Did you say it was the fly-leaf?
A. The back-leaf; the back fly-leaf.

The Court: If counsel will step to the bench now, I will state privately what I think about this matter. (Referring to subpœna duces tecum handed to the Court by Mr. Lester.)

(After a conference between the Court and counsel out of the hearing of the jury, the following occurred):

The Court: We have reached the usual time for adjournment. It is well understood, I think, by all lawyers, that when a
156 witness is on the stand, even after a session of court, if an adjournment of the court is taken, he is not to be talked with about his testimony; and nobody has any right to assume that anybody will talk with this witness. There is no reason to suppose that anybody will; and the witness will understand that he is not to have any talk with anybody about the subject matter of his testimony; and if he should, it might be treated as contempt of court. I simply speak of this, which is understood by everybody who understands the business of a court.

With that understanding we will take the usual recess until to-morrow morning at ten.

157 THE UNITED STATES
vs.
EDWIN S. HOLMES, JR.

Testimony of Lewis V. Van Riper Copied from Book 10 of Stenographer's Minutes, Pages 1083 to 1167

158 *Testimony of L. C. Van Riper.*

(Book 10, Page 1083.)

WASHINGTON, D. C., *Wednesday, June* 19, 1907
10 o'clock a. m.

The Court *met* pursuant to adjournment.

Present on behalf of the United States, Hon. Morgan H. Beach, Special Assistant to the Attorney General.

Hon. D. W. Baker, U. S. District Attorney, and Jesse C. Adkins, Esq., Assistant U. S. District Attorney.

Present on behalf of the defendant, A. S. Worthington, Esq., and Wharton B. Lester, Esq.

Mr. BAKER: Yesterday a call was made for the affidavit of the witness. We have made search and cannot find the original affi-

davit; but we have several copies of it, and I am prepared to submit to counsel on the other side a copy.

Mr. WORTHINGTON: I am much obliged to you, Mr. Baker. I may say that I see that it has been said that I said yesterday I was afraid the District Attorney would go over this paper with him. I did not say anything of the kind. I simply said I did not want him to be thinking of it over night.

The COURT: I did not understand you to say anything of the kind.

Whereupon—

L. C. VAN RIPER, resumed the stand for further cross-examination.

By Mr. WORTHINGTON:

Q. Mr. Van Riper, you have heard what the District Attorney has said, that this is supposed to be a copy of an affidavit. I wish you would read it over. I want to ask you, in the first place, whether or not that is your recollection of the paper? Is that your recollection of the affidavit you gave?

159 A. I assume it is.

Q. I do not ask you *what* you assume. I ask you if that is your recollection of the paper?

A. Yes sir; it refreshed my memory on a couple of points I had forgotten about.

Q. I was going to say that I could refresh your memory. I will read this paper so that the jury may know what it is, and will ask questions about it as I go along.

"STATE OF NEW YORK,
County of New York, ss:

"Lewis C. Van Riper, being duly sworn says that he is acquainted with Edward S. Holmes, Jr., of Washington, D. C., who was introduced to him in or about the month of August, 1901, and that said Holmes at present holds the position of Assistant Statistician of the Bureau of Statistics of the Department of Agriculture, at Washington, D. C.

That said Holmes, has at various times, furnished advance information to various persons with the intention that such information should be used by said persons in market operations. Said information related to the statistics and data compiled by the said Bureau, under the supervision of said Holmes, and was issued prior to the time when the same was or should have been regularly issued to the public; and

Furthermore, said Holmes has, at various times, used his influence, and has undertaken to procure, and deponent believes has in fact, procured the statistics and data as originally compiled, to be changed and altered, so that the result would appear more favorable to the interests of the persons for whom the said information was procured and to whom it was furnished, as aforesaid, as to the particular occasion might require, and as the said persons to whom it was furnished had desired and requested from him, said

changes being contrary to the facts, and as above stated, the altered statements being furnished to suit the whim and convenience of the persons to whom the same was furnished, who deponent, believes used the same for the purposes of speculation only."

I want to ask you about that last paragraph, where you say that at various times the statements were altered to suit the whim and convenience of the persons to whom it was furnished and in whose interest he was working. I want to know what your authority is for making that statement?

A. Mr. Holmes and Mr. Haas.

Q. What did Mr. Holmes say to you on that subject?

A. I testified to that yesterday. They told me about fixing the figures for Price in December, 1903, and Haas also told me about his trip to Washington, on the night of May 31st, 1905, for Mr. Price.

160 Q. Those are the two pieces of information on which your statement was based?

A. Yes sir.

Q. Then you did understand that as to the December, 1903, statement that he had doctored it and changed it so as to suit Mr. Price's directions?

A. Yes sir.

Q. You understood from Mr. Haas, that as to the June statement he had fixed and altered it, and brought the number of bales down until it suited Mr. Price.

A. The bales were not quoted. It was acreage and percentage.

Q. It was in December only that you gave the bales?

A. Yes sir.

Q. But he changed them until Price was satisfied?

A. Yes sir; he had reduced the percentage of acreage production, and had also raised the condition of the crop.

Q. For the purpose of lowering the price of cotton?

A. Yes sir; in the latter instance for the purpose of lowering the price of cotton, and in the first instance for the purpose of advancing the price.

Q. You have no personal knowledge about this June, 1905, matter except what you say Mr. Haas told you?

A. That's all.

Q. I believe you do say that Mr. Holmes told you, in March, that he was going to manipulate things so as to make it as bearish as possible.

A. He didn't say he was going to manipulate things. He said he was going to visit the agencies.

Q. Did he say anything to indicate that he was going to use any influence with them?

A. He was going to use what influence he could to make a bearish report.

Q. Did he give you the idea that he was going to get the agents to make reports that were not true?

A. He was going to try to use his influence so they were not misled to make a report unduly bullish.

Q. You had no scruples about going into this June, 1905, arrangement, with the expectation of making money out of it?

A. Not until the last trip of Haas to Washington. I did oppose that.

Q. On what ground?

A. On the ground that they were going too far.

Q. What do you mean?

A. I mean that they had no right to come down and change the figures, after they had been sent in. I begged Haas not to come down, and he promised me that he wouldn't. He said that he would go down, but he didn't think he would go near the Colonel.

161 Q. Did you make your protest on the ground that it was immoral or unlawful?

A. Yes sir; both on those grounds and the further ground that it was dangerous.

Q. That it was dangerous?

A. Yes sir.

Q. And might get you all into trouble?

A. It might get them into trouble.

Q. You did not have any fear for yourself?

A. No sir; because I had nothing to do with that part of it.

Q. I will go on:

"That the sources of deponent's knowledge, and the grounds of his belief are as follows:

"That upon first becoming acquainted with Mr. Holmes as aforesaid, said Holmes volunteered, without any solicitation on deponent's part, to furnish deponent with advance information from the Bureau of which he was in charge, said information to consist of the figures that would be announced by the Bureau at various times in the future, and that in order to demonstrate to deponent his ability to do this, he did, at various times, furnish said deponent with exact figures on cotton and wheat in advance of their publication by said Bureau and in advance of the time when the public at large, under the rules of the Department, was rightfully entitled to be acquainted with the information, and in corroboration of the foregoing statements, deponent has in his possession certain letters and data, written by said Holmes, in his own handwriting, to deponent, which deponent offers to produce if requested and necessary."

I call your attention to the fact that you say there that in order to demonstrate his ability to do this Holmes, at various times, furnished you with exact figures on cotton and wheat in advance of the publication by the Bureau. You have told us that he did that on the 9th of August, 1904?

A. Yes sir.

Q. At what other time did he do it?

A. He furnished it on several other times.

Q. For the purpose simply of demonstrating his ability to give it?

A. For the purpose of demonstrating it, and for the purpose of speculating.

Q. That was the only occasion on which he did it, simply for the purpose of a demonstration?

A. Well, it was entirely at my option whether I wished to use it or not.

Q. I am calling your attention to the fact that you say, in this affidavit "In order to demonstrate to deponent his ability to do this he did, at various times, furnish said deponent with exact figures on cotton and wheat in advance of their publication?

A. He did.

Q. Did he do it at various times just for the purpose of letting you know that he could do it?

A. Yes sir.

Q. At what other time than on August 9th, did he do it for that purpose only?

A. He furnished it on the 9th of August. He furnished it on the day before the Cotton report in September.

He furnished the wheat report in September, the cotton report in October, the wheat report in October, the wheat report in November, the cotton report in December. I am not sure whether there was a wheat report in December or not.

Q. And on all those occasions, after the 9th of August, he furnished it simply in pursuance of the arrangement you had made about speculating and dividing the profits?

A. I never made any arrangement with Mr. Holmes.

Q. I didn't say you did. I say they were made in pursuance of an arrangement you had for speculation and dividing the profits?

A. The arrangements I had made with Mr. Peckham were entirely at my option, whether I would trade on it or not. I would trade on such as I wanted to, and when I wanted to trade with him, I reported to him, and when I didn't I didn't report to him.

Q. Your arrangement, then, whatever it was, was with Mr. Peckham alone, and Mr. Holmes was not a party to it?

A. No sir, he was not.

Q. Mr. Holmes was not a party to any agreement with you?

A. He was not a party at all.

Q. Did he make any arrangements with Mr. Haas, in your presence, for dividing the profits?

A. I made an arrangement with Mr. Haas in Mr. Holmes' presence.

Q. I am asking you whether Mr. Holmes made any arrangement with Mr. Haas in your presence, for dividing or receiving profits?

A. No sir.

Mr. BAKER: I object to the question in the form it is put, because there might have been an arrangement made in law and not in words.

The COURT: The question has been asked and answered. There is nothing pending for me to pass upon. You can go on.

By Mr. WORTHINGTON:

Q. Was any arrangement made in your presence, between Mr. Holmes and Mr. Peckham that Mr. Holmes was to receive any part of the profits?

Mr. BAKER: I object to that question because it calls for a conclusion of law.

The COURT: It will not be treated as a conclusion of law. I believe he means to ask whether there was anything said about it.

A. No sir.

163 By Mr. WORTHINGTON:

Q. So far as your personal knowledge goes, Mr. Holmes never had any arrangement with anybody to receive any part of the profits from these speculations?

A. No sir.

Q. I will go on:

"The above information was furnished to deponent without any solicitation on the part of deponent, as aforesaid, and without any promise on the part of the deponent of remuneration to said Holmes in any way, shape or manner."

A. That is true.

Q. "That on or about March 10th, 1905, said Holmes visited deponent's office and there disclosed to deponent certain plans which were formulated by himself and others, whose names deponent does not desire at this time to make public, to influence June reports so as to make the same appear as bearish as possible."

Who were the persons whose names you did not wish to disclose at that time?

A. Mr. Price, Mr. Haas and Mr. Hyde.

Q. Why did you want to conceal their names?

A. I did not desire any more notoriety than was absolutely necessary in connection with the affair.

Q. I go on:

"That said Holmes introduced deponent to a friend of his, who is an ex-employee of the Statistical Bureau and whose name deponent is not desirous of disclosing at this time (hereinafter referred to as an ex-employee) who told deponent that said ex-employee would keep deponent posted as to all plans and developments."

I suppose the ex-employee is Mr. Haas?

A. Yes sir.

Q. "Said ex-employee, on or about May 1st, 1905, told deponent that said Holmes was making a trip, visiting various state agents of the cotton growing states, with a view to influencing their reports."

That is something you have not told us about here. I have understood you to say that Mr. Holmes told you that in March.

A. Mr. Holmes told me in March he was going to do that. He didn't say it right at that time.

Q. Let me read you again what you say in this affidavit about that:

"That on or about March 10th, 1905, said Holmes visited deponent's office, and there disclosed to deponent certain plans which were formulated by himself and others, whose names deponent does not desire at this time to make public to influence the June report so as to make the same appear as bearish as possible."

You do not say anything there about Holmes having told
161 you he was going down there and see the agents?

A. No.

Q. How did you omit that in the affidavit?

A. I don't know.

Q. You have told us here that Holmes told you in March that he was going down to see the agents, but you did not say anything about Haas telling you about it. You say in this affidavit that said ex-employee, on or about May 1st, 1905, told deponent that said Holmes was about to make a trip, etc.

A. They both told me.

Q. In the affidavit you inadvertently omitted to say that Holmes told you?

A. There are lots of things I didn't say in the affidavit that were true.

Q. But you inadvertently omitted to tell us on your direct examination that Haas had told you that about the first of May?

A. Yes sir; and that refreshes my memory. I had forgotten about that:

"And as a result of the efforts of said Holmes, the percentage of condition, 77.2 which was given, was higher than actual conditions existed warranted, and that the acreage given, 11.4, was lower than actually warranted by the reports which he received in due course from the government agents in said cotton growing states which in themselves, in various instances, had previously been influenced in the same direction through various correspondents?"

Q. What did you mean by that?

A. I meant that was my belief.

Q. "Which in themselves, in various instances, had previously been influenced in the same direction through the various correspondents?"

A. That was my belief at the time I made that affidavit.

Q. That Mr. Holmes had influenced them to send in reports and make them the way he wanted them?

A. Yes sir.

Q. That is something you have not yet told us.

A. I was not asked for an opinion.

Q. Had you any information from Mr. Holmes on that subject?

A. Only what he told me about his contemplated trip, in March, and what Haas afterwards told me.

Q. I understand you to say here that in various instances he had previously been influenced in the same direction?

A. Previous to the June report.

Q. What were the various instances previous to the June report, where you understood that Holmes had influenced the correspondents to send in false reports?

A. I didn't say false reports. I said he had influenced them to make reports favorable to his wishes.

Q. Do you mean that he had influenced them to send in true reports?

A. I don't know. It is pretty hard to draw the lines there.

165 Q. I would like to know where you would draw the line?

A. Well, may I give you an illustration of what I mean?

Q. Why sure.

A. For instance, if you are defending a client, and you believe yourself he is guilty, it is your duty to influence the jury to acquit him if you can; is it not?

Q. I am not on the witness stand at present, and you are.

A. Well, he was using his argument and his persuasive qualities to show those men that the acreage had not been reduced as much as the public expected.

Q. Did Mr. Holmes tell you that is what he had done on any occasion?

A. No sir; he told me that was what he was about to do.

Q. He had only told you, in March, that he was going to do it.

A. Yes sir.

Q. And he had never told you that he had previously done it?

A. No sir, not in this way.

Mr. BAKER: The word "previously" there refers to the reports of agents prior to the January report, in that month, and not to other reports, as Mr. Worthington is trying to interpret it.

Mr. WORTHINGTON: I do not want to misinterpret it, and I will read it again:

"And that as a result of the efforts of said Holmes, the percentage of condition 77.2, which was given, was higher than actual conditions existed warranted, and that the acreage given 11.1, was lower than actually warranted by the reports which he received in due course from the Government agents in the said cotton growing states, which in themselves, in various instances, had previously been influenced in the same direction through various correspondents."

I think Mr. Baker's criticism about that is correct and that it probably means what he suggests it does.

By Mr. WORTHINGTON:

Q. I go on:

"On Wednesday night, May 31st, at his request, deponent met the said ex-employee at the Waldorf-Astoria Hotel, and he then informed deponent that he was about to have a conference with certain New York cotton speculators. He also informed deponent at that time that the figures to be issued on June 3rd would show average condition 75 per cent and reduction in acreage from 12½ to 13 per cent, and that these figures were the most bearish that could be secured under the circumstances."

"Later in the same evening, deponent was asked over the telephone, by said ex-employee, to again meet him, which deponent did, and he thereupon informed deponent that the said speculators, after a conference, had not considered the figures which the said ex-employee had secured from said Holmes, and which he fur-

166 thermore stated said Holmes had me-nt figures, bearish enough for their purposes, and that he, the said ex-employee

was going to Washington, on the 12:15 train on the Baltimore & Ohio Railroad that evening to meet said Holmes and to arrange, if possible, to manipulate statistical figures and data in order to show a result which they might be able to formulate as being more favorable to their purposes."

You do not say anything here about your protesting against that, I notice?

A. No.

"That on the morning of June 2nd, about 8:30 A. M. about three hours before the said report was due to be announced in Washington, the said ex-employee called deponent up on the telephone and told him that the figures to be announced would show condition about 77 per cent, and percentage reduction about 11½ per cent, and also that at his request it would be announced that the acreage announced only included acreage actually planted up to May 25th, so that said report would have a more bearish effect."

A. Mr. Worthington, may I say something here?

Q. Certainly.

A. That refreshes my memory about another matter I did not speak about on my direct examination.

By Mr. Beach:

Q. What was it?

Mr. Worthington: I will ask him about it.

A. Mr. Haas told me over the 'phone that it was arranged that Mr. Price would wire Mr. Hyde, after that report was issued, and would ask him if the acreage percentage reported included acreage planted after May 25th, and that the crop being so very late and a great deal of cotton was still being planted, and that Mr. Hyde's answer by wire would be that this report only included acreage planted to May 25th, that that would be announced to the press and the cotton trade, and it would break the market still further.

Q. Who told you that?

A. Mr. Haas, over the 'phone that morning.

Q. You understood then, from Mr. Haas, that Mr. Hyde was in the scheme?

A. That Mr. Holmes was arranging this matter.

Q. He said he arranged that Mr. Hyde would send that answer?

A. Yes sir; and it was done after the report came out.

Q. You have no personal knowledge of that, I suppose?

A. I do. I saw Price's telegram published, and the statement made in the press afterwards.

Q. You saw that?

A. I saw the publication of this correspondence and these telegrams.

167 Q. When were they published?

A. They were published either that afternoon or the day following.

Q. You mean either the day of the report or the day after?

A. I think the following morning it appeared in the New York Commercial or the Journal of Commerce.

Q. We will find either on the third or fourth of June?

A. Yes sir; or on the day of this report.

Q. It was given out to the public and the press before there had been any of these disclosures by you?

A. Yes sir.

Q. "That if the departmental figures, statistics and data are to be manipulated at the will of speculators, and subject to the whim of departmental clerks and employees the legitimate trading is, in effect, paralyzed and the business underlying said trade is in a continual demoralized condition, and the ultimate effect on the holders of cotton and grain is too well known to be commented upon.

The effect would be disastrous to everyone, to the producer, the consumer, and the legitimate trader, and would only be beneficial to the speculator or gambler." I notice that in the closing paragraph or peroration, if I may term it so, you say that if the department's figures, statistics and data are to be manipulated at the will of speculators, and subject to the whim of department clerks and employees"——

Why did you lay so much stress upon that in your affidavit when, as a matter of fact, the principal arrangement was that you were to get the correct information and not have the returns manipulated?

A. My understanding at that time was that Mr. Holmes would be able to give any figures he saw fit to suit Price, while Mr. Hyde was in Europe.

Q. Was Mr. Hyde in Europe at that time?

A. No sir; but they told me that he was going to Europe right after the June 3rd report.

Mr. LESTER: What is the date of that affidavit?

Mr. BAKER: It is dated June 6, 1905.

By Mr. WORTHINGTON:

Q. Now, I want to have you take up each of the months*in* when you say this agreement about making profits and dividing with Haas and Peckham was in force. I want to know to what extent, if at all, the operations which you entered into were effected by the disclosures or alleged disclosures made by Mr. Holmes as to what the reports would be. You say the arrangement was made in August 1904?

A. Yes sir.

Q. There are four months then we would have to consider, so far as cotton is concerned, that is, September, October and December 1904, and June 1905. Is that right?

168 A. That is correct.

Q. You were asked by the District Attorney about the September operations, and I understood you to say that you made a profit of $2100. Is that right?

A. $2115, I think.

Q. I do not recall that anything was produced here to show how is was made. I would like to know whether you bought or sold?

A. I sold.

Q. Through what brokers did you deal?

A. G. Gates & Company.

Q. The whole transaction in the September deal was made through that concern?

A. Yes sir.

Mr. WORTHINGTON: Have you got the books here?

Mr. BAKER: We have got the statements here.

Mr. WORTHINGTON: The statements of Gates & Company?

Mr. BAKER: Yes sir.

By Mr. WORTHINGTON:

Q. I show you these papers (Exhibit 215), which the District Attorney has handed to me and ask you to tell me from them what you can as to the details of your operations in cotton, with reference to the September statement by the department made on September 2nd. I want you to tell us the amounts and how that $2100 was made?

A. On August 31st, I sold 300 bales at $1080; on September 1st, 400 bales at $1089;—10 at 1076—10 at 1077; On September 2nd, 200 at 1056. This date is not carried forward. Then it says "Bought 600 at 1040—500 at 1033. Of course that is September 2nd. It is either the second or third; but that report was on September 2nd, on account of Labor Day and Sunday.

Q. The report was on the 2nd. You began that operation on the 31st of August?

A. Yes, sir.

Q. You began by buying or selling?

A. By selling.

Q. That was on the expectation that the report would be bearish or bullish?

A. Bearish.

Q. So that the price would go down, and you could buy back, as you express it, at a profit?

A. Yes, sir.

Q. What information had you on the 31st of August, which led you to start these operations?

A. I think I had a letter from Mr. Holmes of August 30th, telling me that if I had any of that stuff to sell it and I sold some on the next day.

Q. You were proceeding then, with reference to this September deal, on information which you say he gave you on the 30th of August?

A. Yes, sir.

Q. You have not told us just how this $2100 profit was made?

A. It is the difference between the sale and the pur- with the commission deducted, of $2115.

169 Q. The statement shows a balance of $2115?

A. Yes sir.

Q. That was the profit on the transaction?

A. Yes, sir.

Q. You would infer from this statement that you bought on the second of September, although there is no date on the paper?

A. Yes sir: I bought after the report was issued.

Q. I would like to take up the month of October. I want to find out when it was you began the operations in cotton with reference to the October 3rd report, which resulted, I think you told us, in a loss?

A. Yes, sir.

Q. I want to know what there is that will show when you began that operation?

A. I think Mr. Beech has the statement of the brokers.

Q. With whom did you deal with reference to the October speculation in cotton?

A. We dealt with Hubbard Brothers. I am not sure but what we dealt with Gates.

Q. You cannot be positive whether the whole transaction was with Hubbard Brothers or not?

A. No sir; not at this time.

Q. Are the statements all here?

A. I think so.

Q. Do you recall about how much you made or lost on the October transaction in cotton?

A. I don't recall exactly.

Q. I don't ask you to recall it exactly. I did not know but that an event of that kind might have impressed itself upon your mind so that you could tell us about it. It was quite a loss; was it quite a loss?

A. About $18,000 or $20,000.

Q. About $20,000?

A. Some where near that.

Q. Was that because the figures did not turn out as you were told they would, or because the market did not respond to them?

A. No sir; it was because we were misled as to Mr. Price's operations; or at least we thought that it was. We were a couple of days behind.

Q. Do you mean that Mr. Price's operations were so large *that* they would balance the market as against the Government's report?

A. They would sometimes.

Q. They would sometimes?

A. Yes, sir.

Q. You thought you were getting inside information?

A. Unless the report was an entire surprise or something like that, a large operator like Price could sometime turn the market.

Q. You thought you were getting inside information about what Price was going to do, and it turned out you had it wrong?

A. We were getting it, but it came through Haas to Holmes and from Holmes to Peckham, and we were about two days behind the real movement, and that's why Haas came to — brought into the deal later.

170 Q. You thought it was necessary to have Haas in it, so that you would know what Price was going to do?

A. So that we would know right away.

Q. With that explanation, I now hand you these papers, which seem to be statements of account with Hubbard Brothers. I notice one of these is dated May 31st, 1907.

Mr. ADKINS: That is a recent transcript from the books. The books are here. I take it that they both bear that date.

By Mr. WORTHINGTON:

Q. The books are here, and they are a transcript from the books. I would like you to look at this paper and tell us when you began operations on that October cotton deal?

A. September 26th.

Q. That report was issued on the 3rd of October at 12 o'clock noon, and you began on the 26th day of September?

A. Yes sir.

Q. To use the lingo of the street, did you buy or sell on the 26th of September?

A. We bought.

Q. Go on with your transactions down to the third?

A. We bought a thousand bales.

Q. You speak of bales. I think a bale averages in the neighborhood of 500 pounds or more?

A. Yes sir.

Q. What is the next purchase?

A. September 27th—2 December—1046; September 27th—8 December—1045; September 26—10 December—1065; September 30th, 10 December—1023; October 5th, 5 December—1019.

Q. When did you sell?

A. This October 5th purchase was made after the sales were made. On September 29th, we began to sell. We sold 10 December at 1050—4 December at 1028—6 December 1029 on September 29th. October 1st we sold 5 December at 1012; 5 December at 1010; 5 December at 1013. On October 3rd, we sold 5 December at 1002; 1 December at 999; 4 December at 998; 3 December at 999; 2 December at 998; 5 December at 998; on October 4th we sold 3 December at 980, and 2 December at 979.

Q. I observe that some of these sales were on the day the report appeared.

A. Yes sir.

Q. Is there anything in the papers in the way this business is managed, by which the papers will show the hour at which the transactions occurred?

A. I could not say as to that.

Q. You began to buy on the 26th of September.

A. The record of quotations for that day might show, on the cotton exchange.

Q. I say you bought on the 26th, 27th and 30th of September?

171 A. Yes sir.

Q. On what information from Mr. Holmes, or purporting to come from Mr. Holmes, did you begin to buy on the 26th of September, 8 days before the report was to come out?

A. On information received from Mr. Peckham, that Mr. Price was buying.

Q. Mr. Holmes had nothing to do with that then?

A. Yes sir: Mr. Peckham was down here in conference with Mr. Holmes at the time. That was the advice that came from Holmes.

Q. You understood on Mr. Holmes' information through Mr. Peckham, as early as the 26th of September, that there would probably be a bearish report on the 3rd of October. Is that right?

A. Yes sir.

Q. This other paper (Exhibit 214) shows cash transactions. On the 26th of September, you appear to have *to have* put up $4,000?

A. Yes sir.

Q. That was for margins?

A. I don't know about that. It was just on account.

Q. Will you tell us what was the ordinary margin required at that time on cotton transactions, when you wanted to deal?

A. It is according to the standing of the customer, to a certain extent. Sometimes you don't have to put up any margin.

Q. If it not be too delicate a question, what was generally required of you?

A. In some instances I didn't have to put up any margin. I merely paid the difference from day to day. If the market went down I made a deposit to cover the loss, and if it went up they paid me.

Q. You had no rule or rhyme about it at all?

A. Not in some instances. In other instances they would say: "Give us a check for so much." I would give them a check. There was never any particular amount figured.

"The above mentioned paper, being exhibit No. 214, is in the words and figures following, to wit:

Account Current.

NEW YORK, *May* 31, 1907.

Mr. L. C. Van Riper in Account with Hubbard Bros. & Co., Coffee Exchange Building.

1904.			Dr.		Cr.
Sept. 26	cash				4000
27	"				3000
30	"				1500
Oct. 5	"				2000

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1904.			Dr.		Cr.
Sept. 29	ac's	6089	9000	Forwarded	10500
	"		1970		
Oct. 1	"	6161	675		
	"	6162	1860		
5	"	6283	3340		
6		cash	1755		
			10500		10500

E. & O. E.

173 Hubbard Bros. & Co., Coffee Exchange Building, New York.

Cable Address "Nodine," N. Y.

COFFEE EXCHANGE BUILDING,
NEW YORK, *May* 31, 1907.

To Mr. L. C. Van Riper.

DEAR SIR: Please find herewith our regular report of open trades for your account. If not correct, please oblige us by advising promptly by wire.

Purchases.						Sales.					
'04.				a/c sales.						a/c sales.	
Sep. 26	10	Dec.	10055	6089		Sep. 29	10	Dec.	1050	6089	
27	2	"	1046	6162			4	"	1028	6096	
	8	"	1045	"			6	"	1029	"	
26	10	"	1065	6096		Oct. 1	5	"	1012	6162	
30	10	"	1023	6161			5	"	1010	"	
Oct. 5	25	"	1010	6283			5	"	1012	6161	
							5	"	1013	"	
						Oct. 3	5	"	1002	6283	
							1	"	999	"	
							4	"	998	"	
							3	"	999	"	
							2	"	998	"	
							5	"	998	"	
						Oct. 4	3	"	980	"	
							2	"	979	"	

174 Q. I show you papers which the District Attorney hands me, which are undoubtedly statements of your account with Charles G. Gates and Company. I wish you to look at them, and, if you can, tell from them when you began to deal with Gates & Company, with respect to the October 3rd report?

A. It is pretty hard to do that from this statement, because they are all mixed up with other trades.

Q. Can you pick out from this statement those which relate to the deal on this October 3rd, 1904 cotton report?

A. I don't believe I can.

Q. Do you find any entry there of September 26th?

A. Yes; there is September 26th—cash item.

Q. Look at this paper. Here is an entry of September 26th—300 December cotton.

A. Yes sir;

Q. You were beginning to buy cotton there on the 26th of September, from Gates & Company?

A. Yes sir; the same day.

Q. The same day you began with the others?

A. Yes sir.

Q. So you had what you considered pretty reliable information nine days before the October cotton report was to come out as to what it would be, upon which you could operate?

A. That is that Mr. Peckham told me to begin buying.

Mr. BAKER: Did Mr. Peckham tell you in writing or orally?

A. Yes sir; I think the letters are in evidence.

By Mr. WORTHINGTON:

Q. Then the letters from Mr. Peckham, which are in evidence in this case are the information upon which you began to buy cotton on the 26th of September?

A. I think so; and he used to call me on the phone too.

Q. Have you any recollection that you got any information from him in reference to the October 3rd cotton report would be in 1904, except from the letters?

A. I don't understand that.

Q. Have you any recollection that you got any information from him, except what you got out of the letters?

A. Yes; I talked to him on the phone every day when he was down here.

(Said exhibit No. 216 is in the words and figures following, to-wit:

175 (Copy.)

NEW YORK, *May* 31, 1907.

M. Lewis C. Van Riper, in Account with Charles G. Gates & Co., DR.

1904.			
Aug.	12	To wheat	106.25
	20	Check	1893.75
Sep.	2	"	4615
	15	"	4537.50
	29	1000 Dec. cotton	1705
Oct.	1	1000 "	650
	5	1000 "	1145
	11	50 corn	225
		Cash	300
		"	140
		"	60
	12	Check	2215
Nov.	12	Cash	45
		"	155
		"	250
		"	250
	14	Check	2500
Dec.	16	Cash	100
	17	"	100
		"	100
	21	"	100
	21	"	100
	21	"	237.50
Dec.	22	Cash	100
	22	"	437.50

1905.			
Jan.	9	"	200
	16	"	65
		"	25
		"	10
		"	100
	17	100 May wheat	562.50
	25	Tran. to year stock	200
		200 May wheat	937.50
		Check	23,856.25

Cr.

1904.			
Aug.	9	Check	2000
	31	Amt. Thro Wald Ast. Beh.	2500
Sep.	2	1100 Dec. cotton	2115
	10	Amt. Thro Wald. Beh	1500
176		Check	350
		Amt. Thro Wald Beh	150
	13	40 May wheat	2537.50
	26	Currency	4000
	30	Check	1000
Oct.	10	"	1000
	11	"	500
Nov.	10	"	3000
Dec.	16	Cash	100
	17	Check	10000
		Cash	100
	21	"	100
		"	100
	22	"	100
	28	Check	10000
	30	100 May wheat Mil.	4468.75
	31	100 " " "	2262.50

Memorandum from Charles G. Gates & Co., 14–16–18 *Wall Street.*

New York, ——, 1904.

L. C. Van Riper:

We have the following trades open for your account.

		Bought.			Sold.		
1904.				1904.			
Aug	300	Dec. Cotton	1040	Sep 13	300	Dec. Cotton	1080
	100	" "	1033		400	" "	1089
	300	" "	1040		100	" "	1077
	400	" "	1033		100	" "	1076
9/26	300	" "	1064		200	" "	1056
	200	" "	1063		500	" "	1031
	500	" "	1062		500	" "	1030
9/30	1000	" "	1023		1000	" "	1013
10/5	200	" "	1017		1000	" "	998
	700	" "	1018				
	100	" "	1019				

177 By Mr. WORTHINGTON:

Q. As to the December transaction, there being no crop report in November, you have told us that you began as early as the 10th of November?

A. Yes sir.

Q. And your operations continued through the month of November?

A. Yes sir.

Mr. WORTHINGTON: I would like to have that Liverpool statement again.

By Mr. WORTHINGTON:

Q. I show you this exhibit No. 204, being the statement of Waterhouse & Sons, with reference to your operations in cotton in November, 1904. I think you told us yesterday that you began selling cotton on November 10th and sold on the 10th, the 17th, the 18th and the 23rd?

A. Yes sir.

Q. How many bales during those dates?

A. 5000, I think.

Q. 5000 bales?

A. Yes sir.

Q. By the other side of that account it appears you sold that out on the 26th?

A. I bought it in.

Q. Did you buy in 5000 then?

A. I think so.

Q. I see by comparing the figures that you bought it in at a good deal less than you sold it out?

A. Yes sir.

Q. And that is where you made your profit?

A. Yes sir.

Q. That is a part of the profit that entered into this $166,000 profit that you have told us about?

A. Yes sir; that is a $18,300 item.

Q. That cotton was all sold between the 10th of November and the 26th of November?

A. That's right.

Q. On what information from Mr. Holmes or purporting to come from Mr. Holmes did you act upon in that matter?

A. Upon the advice of Mr. Haas.

Q. Do you mean Mr. Haas gave you information which purported to come from Mr. Holmes?

A. Mr. Haas suggested to me it would be a good plan to close it out on account of the market having broke and that Mr. Price would be taking on some cotton to put out at a higher price.

Q. I am not asking you so much about when you bought it back as about what the information was that purported to come from Mr. Holmes which induced you to sell, in expectation that there would be a fall in the price?

Mr. BAKER: He has answered that he did not get the information

from Mr. Holmes but from Mr. Haas. He has answered the question fully and I don't see why it should be put to the witness again.

By Mr. WORTHINGTON:

178 Q. Do you mean that the information which Mr. Haas gave you did not purport to come from Mr. Holmes at all, about that trade?

A. I have already testified fully regarding that, I think. I testified that Mr. Holmes thought the report would be bearish, and Mr. Price had begun to sell around the 10th of November, and Haas advised that I begin to sell.

Q. I am very anxious in regard to this matter to confine my examination not now to your buying, but to your selling. You sold from the 10th to the 23rd about 5000 bales?

A. Yes, sir.

Q. I want to know if, at that time, you were proceeding upon any information that you understood to come from Mr. Holmes through Mr. Haas or anybody else?

A. Mr. Holmes through Mr. Haas.

Q. What was the information that came to you from Mr. Haas which you understood to come through Mr. Holmes upon which you sold that cotton between the 10th and the 23rd of November?

A. Mr. Haas told me that Mr. Holmes thought the report would be very bearish.

Q. That he thought the December report would be very bearish?

A. Yes, sir; and that Mr. Price was selling cotton.

Q. Did Mr. Haas tell you anything about how Mr. Holmes knew as early as the 10th of November, that the cotton crop report on the 3rd of December, was going to be bearish?

A. No, sir.

Q. Or whether it would be bearish or bullish?

A. No, sir; he never claimed to know at that time.

Q. What was it you understood from Mr. Haas about the information from Mr. Holmes?

A. It was merely Mr. Holmes' own judgment from the information he had.

Q. Do these accounts just balance; are there 5000 bales on each side?

A. There are 6000 bales on each side. I made a mistake about that.

Q. Now, let us take up this next exhibit, which is No. 205. If I correctly understand the exhibit you sold a lot of cotton on the 28th of November?

A. Yes, sir.

Q. And you bought it back on the 7th day of December?

A. Yes sir.

Q. How much?

A. 5000 bales.

Q. You bought it all on the 28th of November?

A. Yes sir.

Q. And sold it out on the 7th of December at a profit?

A. Yes, sir.

Q. On what information did you act with reference to the prospective December cotton report on the 28th of November, 5 days before——

179 A. The same information that I did on the other.

Q. That is Mr. Haas told you that Mr. Holmes, exercising his general knowledge and judgment about these matters thought that the December report would be bearish?

A. Yes sir; and that Mr. Price was selling.

Q. That entered into it also?

A. Yes sir.

Q. The cotton crop report for December was first given out, as we see here, on the 3rd of December, and, in the preliminary report, gave the figures at 12,162,000 bales as the estimated total production?

A. Yes sir.

Q. Why was it you did not buy back until the 7th of December?

A. The market was going down and Mr. Haas thought it would be better to buy it at a cheaper price, by waiting.

Q. Did it actually keep on going down?

A. Yes sir.

Q. For four days afterwards?

A. You see this report, if I remember correctly, came out on Saturday, so that it was the fifth before we could do anything.

Q. Is that so?

A. That is my recollection.

Q. The report gets to New York within a few minutes after it is issued down here?

A. I think it was issued there at 11:15.

Q. It would be in New York by 11:20?

A. No sir; it was supposed to be there at 11:15. It was an instantaneous flash.

Q. The cotton Exchange hours are what?

A. They close at 12 o'clock I think on that day.

Q. On Saturday?

A. Yes sir.

Q. In December?

A. Yes sir.

Q. Are you sure about that?

A. I am pretty sure about it; it might have — one. They have held open until one o'clock; but I think on this day they close at 12 o'clock.

Q. December 3rd, you think, was Saturday, and the Exchange closed at noon.

A. That is my recollection.

Q. Then you allowed Monday and Tuesday to go by.

A. Yes sir; because there was almost a panic on the Cotton Exchange and the market was breaking right along.

(Exhibits Nos. 204 and 205 are admitted in evidence, and are in the words and figures following, to-wit):

180 LIVERPOOL, 26*th November*, 1904.

Lewis C. Van Riper, Esq.:

Nich's Waterhouse & Sons.

For difference on 6000 Bales Cotton, March & April, 1905, delivery.

Purchases.			Sales.				
Date.	Amount.	Price.	Date.	Amount.	Price.	Points difference.	In your favor.
Nov. 26.	1800	5–11	Nov. 10.	1800	5–33	396	792
"	200	5–11	"	200	5–32	42	84
"	100	5–11	17.	100	5–34	23	46
"	1600	5–12	"	1600	5–34	352	704
"	100	5–12	"	100	5–33	21	42
"	200	5–13	"	200	5–33	40	80
"	1000	5–13	18.	1000	5–29	160	320
"	1000	5–13	23.	1000	5–13	.....	.....
							2068

Clearing house stamps, 310.

Brokerage on 63510 at ½% 31711..... 321.1

Difference now due you less interest to 10 April, 1905, 135 ap. at 5%..... 1746.19

32. 6

1714.12.11

181 (205.)

LIVERPOOL, 8 *December*, 1904.

L. C. Van Riper, Esq., New York:

Nich's Waterhouse & Sons.

For difference on 5000 bales cotton, M'ch, Ap'l, 1905, delivery.

Purchases.			Sales.				
Date.	Amount.	Price.	Date.	Amount.	Price.	Points difference.	In your favor.
Dec. 7.	600	427	Nov. 28.	600	520	558	1116
" "	200	427⅛	" "	200	520	185	370
" "	600	427½	" "	600	519	549	1098
" "	600	428	" "	600	519	546	1092
" "	1000	429	" "	1000	518	890	1780
" "	1500	429	" "	1500	517	1320	2640
" "	500	429½	" "	500	517	437½	875
							8971

Clearing house stamps, 2 184.

Brokerage on 518.16 at ½% 259. 1 7..... 261 19 11

Difference now due you less interest to 10 Apr., 1905... 8709– 1

E. B. S.

Q. This next paper is Exhibit No. 206 and represents 5000 more bales that you sold on November 29th and bought on December 7th?
A. Yes sir.
Q. The same explanation, I suppose, would apply to that?
A. Yes sir.
Q. With respect to the information from Mr. Holmes?
A. Yes sir.

(The above mentioned Exhibit No. 206 is in the words and figures following, to wit:)

182 (206.)

LIVERPOOL, 8 *December*, 1904.

L. C. Van R-per, Esq., New York:

Nich's Waterhouse & Sons.

For difference on 5000 bales cotton, M'ch, Apr., 1905, delivery.

Purchases.			Sales.				
Date.	Amount	Price.	Date.	Amount.	Price.	Points difference.	In your favor.
Dec. 7.	500	429½	Nov. 29.	500	507	287½	775
	600	429½		600	506	459	918
	900	430		900	506	684	1368
	600	430		600	505	450	900
	400	430½		400	505	298	596
	300	431		300	505	222	444
	700	432		700	505	511	1022
	400	432		400	503	284	568
	600	433		600	503	420	840
							7431
Clearing house stamps, 2 18 4.							
Brokerage on 505.10 at ½%, 252 11.....							255 9 4
Difference now due you less interest to 10 Apr., 1905..							7175 10 4

183 Q. In all these transactions he was exercising his judgment generally as to what the report was going to be?
A. Yes sir.
Q. When you bought back you had the same knowledge that everybody had?
A. Yes sir; but we had the advantage of knowing that the report was 24 hours ahead of any one else.
Q. I understand about that, but I want to see what, if anything, you actually did in the way of reaping any benefit from gettin- information about this report, after it was prepared and before the public had it?
A. I sold more cotton through Mercer.
Q. I understand that you sold from the 10th to the 29th of November, and bought back on the 7th?

A. Yes sir; and I sold more through Mercer on the day of the report. I sold some more through Hubbard Brothers.

Q. I am coming now to the other matters, Mr. Van Riper, can you tell us how much of this profit of $166.00 and odd which you made on these transactions through Waterhouse & Sons, is represented by these exhibits Nos. 204, 205 and 2-?

A. Eighty odd thousand Dollars.

Q. Just one half of it.

A. Yes sir.

Q. Before I go on with these statements, I wish you would tell us just when and from whom you received any information about the cotton crop report of December 1905, after the 29th of November, and before the report was given out?

A. I received it from Mr. Haas.

Q. When, how and what was it?

A. I received that the morning before the opening of the mark-. I had practically the exact figures.

Q. You did not get that in writing?

A. No sir; I got it over the phone.

Q. You have not got anything in writing you can exhibit to us about that; have you?

A. No, I don't think so.

Q. That you say was about what time on the morning of December 3rd?

A. About nine o'clock.

Q. On the morning of December 3rd, Mr. Haas called you on the telephone. What did he say?

A. He said the acreage would show nearly 12,200,000 bales, and that would be exclusive of linters.

Q. Did he say in that telephone conversation, anything about the sources of his information; or was that taken for granted?

A. That was understood. He says: "I have a code message from the Colonel.

Q. Did Mr. Haas purport to be in New York at the time you had this telephone conversation with him?

A. Yes sir; he didn't say, but it sounded like a local call.

Q. Did you recognize his voice?

A. Yes sir.

184 Q. Is that all the information that you received from anybody between the 29th of November and the time this December 3rd report was issued, with reference to what it was going to be?

A. That practically is all; yes. As far as I recall now.

Q. Now, I show you exhibit No. 213, which appears to be an account current with Hubbard Brothers, which the District Attorney hands me, the books being here, and it being more convenient to use them, and ask you to tell me when you began your transactions with Hubbard Brothers with reference to the December 3rd, 1904 cotton report, and what your transactions were?

A. On November 22nd I sold 500 bales at $9.74 and 500 at $9.37. On the 23rd sold 100 at $9.73 and 100 at $9.73 and on the 25th 700 at $9.48.

Q. That made 1900 bales which you sold through Hubbard Brothers between the 22nd and 25th of November?

A. Yes sir.

Q. When did you buy it back, as the phrase is?

A. I bought it back on the 26th?

Q. So far as to that transaction it was begun on the 22nd and finished on the 26th of November?

A. Yes sir.

Q. How much of this $166,000 and odd profit *that* did you get out of that transaction?

A. That shows a profit of $1090.

Q. $1090 less the commission?

A. No; the commission is taken out.

Q. Your account shows $13,075, and after deducting the commission there was $1090 turned over to you?

A. Yes sir.

Q. Now proceed.

A. On the 28th, 100 bales at 974; 500 bales at 964; and 500 bales at 963. That was bought in on the 30th at 926, making a net profit of $3,975.

Q. What was the next?

A. On the 28th, I sold 1000 bales at 964.

Q. I do not care about the prices. Just give the total and the profits?

A. On the 28th and 29th, I sold 5000 bales, showing a net profit of $4285.

Q. That transaction was all completed on the 30th of November?

A. Yes sir.

Q. Now proceed.

A. On the 30th of November, after closing that up, I presume, although I am not sure of that. I sold 3,000 bales, which I bought in on December 1st, showing a profit of $5,785. Then on December 1st, I sold 1,000 bales which I bought in on December 7th, at a profit of $11,925.

Q. What other houses did you deal with — reference to this December 3rd, 1904 cotton report?

A. With L. H. Mercer.

By Mr. WORTHINGTON:

Q. Can you tell us, Mr. Van Riper, whether or not the papers I have just gone over with you in reference to the Hubbard Brothers' account sales show all your dealings through them, with
185 reference to the December 3rd, 1904 cotton crop speculation or report?

A. I have showed all my dealings so far as Haas was interested.

Q. Well, so far as Mr. Holmes was concerned?

A. I do not know that he was concerned; I did not know at that time.

Q. So far as Haas was concerned, then?

A. Yes sir.

Q. I do not want to be hypercritical with you; but I understood

you to have said that you paid Mr. Holmes quite a large sum of money, and that he told you that he wanted it in cash, and you saw him turn it over to Holmes?

A. Yes sir.

Q. Here are two other papers that purport to be accounts of Hubbard Brothers & Company of your transactions about that time. Will you look at them and tell us whether you can add anything to the stock of information we have got on that December 3rd speculation?

A. I think this is a repetition of just what we have read, Mr. Worthington, except that it includes a latter transaction.

Q. If there are any later transactions, what are they?

A. January——

Q. Well, I do not care about going into January.

A. Later in December and January.

Q. Later in December?

A. Yes sir.

Q. Do these papers show that you bought or sold anything, any cotton, prior to December 3rd, 1901, except what we have already been advised?

A. I do not think so.

Q. Then according to your recollection we have all the information about that except as to your transaction with Mercer & Company?

A. I think so.

Q. Are you able to tell us, from your recollection, what they were?

A. Not without referring to the statements. I remember what the profits were, about.

Q. What were they?

A. About $53,000.

Mr. WORTHINGTON: We have not any statements or books here in reference to them, so I am unable to——

Mr. ADKINS: We have this memorandum.

The WITNESS: I have memorandums here that show, Mr. Worthington. I might as well take those up at this point. Let me see those—53 A, B, and C, or whatever they are.

Mr. ADKINS: And we have the book of Mr. Mercer himself, if you care for that.

Mr. WORTHINGTON: Well, that appears to be rather an ambiguous kind of book. I understand Mr. Mercer is to be here?

Mr. ADKINS: Mr. Mercer will explain that. It shows when the transactions were closed.

Mr. WORTHINGTON: What I am particularly concerned about is to see when they began, and I understand this book does not show that?

186 Mr. ADKINS: No.

By Mr. WORTHINGTON:

Q. I show you what I understand to be the memoranda you have referred to, Mr. Van Riper, being exhibits 53 B, 53 C, and 53 D. Is there anything on them?—I show them to you, which will

enable you to inform the jury when these dealings through Mercer & Company began which resulted in this profit of $53,000?

A. No. I had this, which shows the exact amount, $53,670; but the various items I had confused with the later deal on the ginner's report, which is shown in this memorandum.

Q. Is there anything in those memoranda which will enable you to tell the jury when your transactions through Mercer & Company resulting in that $53,000 profit began?

A. No sir; but I think if you would show me Mr. Mercer's book I could give you that.

Q. Mr. WORTHINGTON: The witness says, Mr. Adkins, that he thinks if he sees Mr. Mercer's book he can work it out.

Mr. ADKINS: Mr. Lester has it.

By Mr. WORTHINGTON:

Q. This is rather an uncertain way of getting at things Mr. Van Riper, but I am in pursuit of information. I show you what the District Attorney hands me as the book of Mercer & Company, or Mr. Mercer's book; and if there is anything in it which will enable you to inform us when your dealings with them to which you have referred began, I would like to be advised of it.

A. No, Mr. Worthington, there is not. It only shows the profits and losses. I thought it probably showed the transactions.

Mr. WORTHINGTON: How about the June 1905 transactions. Is there anything here to show when they began?

Mr. ADKINS: I think that will appear from Hubbard's books.

By Mr. WORTHINGTON: In the transaction which resulted in the loss which occasioned your grief in June 1905, through what bankers——

Mr. BAKER: I object to that question, because there has been no testimony here that there was any loss.

Mr. WORTHINGTON: I have understood Mr. Van Riper to say there was.

Mr. LESTER: He said there was "a beautiful loss."

The COURT: He said if he had closed out at a certain time there would have been.

Mr. BAKER: That is what he said, yes.

Mr. WORTHINGTON: He said "I sustained a beautiful loss." I remember that expression struck me as being odd.

Mr. ADKINS: He said he would have sustained it.

The COURT: Well, the jury know what you are referring to; it does not make any difference whether there was a loss or not.

By Mr. WORTHINGTON:

Q. I want to know if there is anything here which will show when these operations began?

A. Mr. Hubbard's books will show the operations through that firm.

187 Q. Had you transactions with other brokers than Hubbard Brothers?

A. Yes sir.

Q. Who were they?
A. L. H. Mercer and A. J. Buston & Company of Liverpool.

Mr. WORTHINGTON: Have you got the Liverpool statements here?
Mr. BAKER: No; we have not got any statements here in regard to that.

By Mr. WORTHINGTON:

Q. You cannot tell us when those operations began?
A. Yes sir; I can. They began on May 31st.
Q. On the 31st day of May?
A. Yes sir.
Q. Through all these various brokers?
A. Yes sir.
Q. And that is the information you have already told us about?
A. I would not swear about Buston on that day; but Hubbard and Mercer, I know, and Gates.
Q. That was upon the information you have already told us about, that you got through Mr. Haas?
A. Yes sir—May 31st, and C. G. Gates too.
Q. Very well. There is another of the speculations, Mr. Van Riper, that I want to inquire about next. That has some connection with the ginner's reports. That was something that took place in November 1904?
A. Yes sir.
Q. What was the beginning of that deal?
A. Well, when Mr. Holmes and Mr. Haas were in New York, on the 11th or 12th of December, Mr. Haas suggested to Mr. Holmes that he, as the head of the Department, as associate of the head of one of the Departments, go and have a friendly talk with Mr. North of the Census Bureau and confer with him and try and find out in that way, as near as he could, what the indications were for the ginner's report; and he was to use the argument that the Government cotton report had been criticised considerably, and that they were very anxious to know whether the Census Bureau would confirm the Government report. Then Mr. Haas came back. Mr. Haas came down to Washington, and after that came back and reported that he had seen Mr. Holmes; Mr. Holmes had had this conference with Mr. North, and Mr. North assured him that it would not only confirm it but that it would show even a larger yield than the Government report had, from all the indications, and then asked me to sell a certain number of bales of cotton for Haas' and my joint account, which I did.
Q. Your understanding was, then, that this additional confirmation of the large production of cotton would bear the market still more?
A. Yes sir.
Q. And you would sell the cotton and buy it in when the effect of that report had taken place?
A. Yes sir.

Q. So that transaction which related entirely to information — to be obtained from the Census Bureau?
188
A. Yes sir.

Q. It had not anything in the world to do with the Bureau of Statistics?

A. Except as I have stated, that Mr. Holmes used his official position in order to try and find out and get this information.

Q. As I understand you, the profit that was made in that transaction was not any part of this $166,000 which you have told us about?

A. No sir; that was additional.

Q. That was separate?

A. Yes sir.

Q. You explained to us yesterday that your feeling was toward Mr. Holmes and Mr. Hess when you went to see the Secretary in June 1905. What were the relations between you and Mr. Peckham at that time?

A. Very friendly.

Q. Did you mention his name at all to the Secretary?

A. I am not positive whether I did or not. As I stated yesterday, I did not mention anybody that I could avoid.

Q. At that time you gave to the Secretary these letters which you have produced here and say that you received from Mr. Peckham?

A. Yes; I had to give them to him.

Q. What?

A. I practically had to give those to him, or thought I had to.

Q. Why did you think you had to expose Mr. Peckham?

A. I think they had been given to Mr. Cheatham. I am not positive at this time, but I think I gave those letters to him when he came.

Q. By the way, how did you come to call Mr. Cheatham to your assistance when you went into this explanation to the Secretary?

A. Well, sir, there had been quite a good deal of newspaper talk about the reduction of acreage. The Southern Cotton association had been very prominent and had been holding mass meetings through the South at that time, urging the planters to reduce their acreage; and they had had already a controversy with the Statistical Department over a leakage in reports; and I figured that if Mr. Cheatham or one of the officers of that Association were brought in and went to Mr. Wilson, they would get a hearing, whereas if I went there, being unknown to him, he would probably think that it was like other reports—there would be nothing to it.

Q. Did you know Mr. Cheatham before that?

A. No sir.

Q. You had not had any dealings with him?

A. Yes sir.

Q. Or acted for him as a broker?

A. No sir.

Q. Or received information from him?

A. No sir.

Q. How did you get acquainted with Mr. Peckham?

A. Oh, I met him, I think, in the early part of 1904 or latter part of 1903.

189 Q. You have said Mr. Peckham introduced you to Mr. Holmes?

A. Yes sir.

Q. Who introduced you to Peckham?

A. Mrs. Peckham.

Q. Have your relations with Mr. Peckham continued to be friendly?

A. I never had a word with him in my life.

Q. There is no unkind feeling between you and him so far as you know?

A. Not so far as I am concerned.

Q. Have you any reason to believe he has against you?

A. No sir; excepting over this cotton report.

Q. Did Mr. Peckham threaten to kill you once in the Imperial Hotel?

A. Never. I never had a word with him in my life; always friendly.

Q. How long since you met and talked to him.

A. I have not met him since I came down to Washington, to talk to him.

Q. Since you came down to Washington in June 1905?

A. Yes sir.

Q. He has been over there in business ever since; has he not?

A. I don't know.

Q. You do not know whether he has been engaged in business in New York since then or not?

A. No sir; I don't know anything about him.

Q. Mr. Haas is still over there running a brokerage office?

A. I don't know about that; I have not talked to Mr. Haas.

Q. Since that time?

A. No sir.

Q. Is Mr. Price still carrying on his business there?

A. I assume so. I see his name in the paper every day.

Q. Did not Mr. Holmes introduce you to Mr. Haas at the Imperial Hotel in New York?

A. He did not.

Q. Did you meet Mr. Haas there just after Labor day in 190- early in September?

A. No sir.

Q. Do you recall taking a trip in an automobile to the Atlantic Yacht Club with Mr. and Mrs. Peckham and Mr. & Mrs. Holmes?

A. May be I am mistaken about that Mr. Worthington; but I did not remember meeting Mr. Haas there. Maybe I did meet him there.

Q. Refreshing your recollection——

A. But if I did, there was nothing said about these other matters. I had forgotten entirely if I did meet him there.

Q. Do you remember now, since I have attempted to refresh your recollection?

A. I believe I did meet him there, for this reason—this is now what reminds me of it. That Mr. Haas was going to vote——

Q. Going to what?

A. Going to vote. That must have been in September and we joked him about his being on the wrong side, or something, and I remember now that I jollied him along and made him lose his vote; and we had a little fun about that. He could not get over to vote; so it must have been September. But that incident had entirely passed my memory before, when I said I met him first at——

Q. You remember the automobile trip do you, now?

A. Oh yes.

Q. You went down to the Yacht Club?

A. Yes sir.

Q. You were a member of that club?

A. Yes sir.

Q. And someone was taken sick in the party, and had to stay there?

A. Yes sir, yes sir.

Q. That was Mrs. Peckham, was it not?

A. Yes sir.

Q. How nearly can you fix the time of that meeting with Haas which you had forgotten all about?

A. Well, it was just before Election day, I remember now.

Q. Just before Election Day?

A. I mean, either before or on Election day.

Q. That is in November?

A. Either just before or on Election day.

Q. What day do you have your election in New York.

A. Well, it was in September. *Of* no; it was not, either. That is right. No; then I did not meet him there. I guess it was—no, no; I am wrong about that. I don't remember that I did meet him there in September. It was in November; that is right.

Q. You have said you remember the automobile trip?

A. Well, I do remember that, but Haas was not there then.

Q. When was that? Do you say that was in November?

A. I don't remember the date of that automobile trip now; but Mr. Holmes and Mrs. Holmes were there on a visit to Mr. and Mrs. Peckham.

Q. Did you go down to the Yacht Club with that party more than once in an automobile?

Mr. BAKER: I object.

A. I may have.

Mr. BAKER: I object to "that party" unless it refers to some party to this proceeding.

Mr. WORTHINGTON: I am referring to Mr. and Mrs. Peckham and Mr. and Mrs. Holmes; that is the party.

Mr. BEACH: The automobile party.

A. I don't remember that I ever met Mr. Haas until I met him here at the Willard; but I know that he was there at the Imperial on Election day. I was confused on the date of Election day when I first answered your question.

By Mr. WORTHINGTON:

Q. Do you remember of going on that automobile trip with Mr. and Mrs. Peckham and Mr. and Mrs. Holmes?

A. Oh, yes sir.

Q. Down to the Yacht Club?

A. Yes sir.

Q. When was that?

A. I think that was in September.

191 Q. After you had returned from that trip, did you not meet Mr. Haas that same day at the Imperial Hotel?

A. I do not think I did. I do not have any recollection of it now. In fact, I do not remember of ever seeing Haas but once before I met him here in the Willard Hotel. He was pointed out to me prior to that.

Q. Will you say positively that you did not meet him as early as the latter part of September, 1904, at the Imperial Hotel?

A. I will say that I do not recall at this time ever having met him until I met him here in October.

Q. I understand you to say that you do not recall it; but do you think your recollection is so distinct that you will say positively you did not meet him early in September, 1904, at the Imperial Hotel in New York?

A. I do not remember of having ever met him there now. Something might refresh my recollection.

Mr. WORTHINGTON: I wish you would let me see this correspondence now—these letters which he says were written from Mr. Holmes and by Mr. Peckham to him; the indictment papers, so to speak?

(Certain papers were handed to Mr. Worthington.)

By Mr. WORTHINGTON:

Q. I will show you the letter of August 30th, 1904, exhibit 7, which I understand you have said is in Mr. Holmes' handwriting, in pencil—two pieces of paper written in pencil—which begins: "If you have bought any of that stuff, sell it out at once, and sell as much as you can in addition." Did you, on receipt of that missive, sell anything?

A. Yes sir, I sold cotton.

Q. What do you say?

A. Yes sir.

Q. You did sell cotton?

A. Yes sir.

Q. Through what broker?

A. I have already testified to that this morning, through these statements here. On August 31st there you will see sales.

Q. Oh yes. In the meantime you had received communication from Mr. Peckham, had you not? (To counsel for the United States.) Have you that communication?

A. My recollection is that I did not hear from Peckham until the following day—the day after I received that letter.

Mr. BEACH: Here are the Peckham letters. It is dated subsequent to that.

Mr. WORTHINGTON: Yes—August 31st.

By Mr. WORTHINGTON:

Q. "We are going to show," this goes on, "very slight decline." As a man acquainted with that business, can you give the jury any idea of what would be called a slight decline or a large rate of decline?

A. A slight decline in the condition — percentage—that is, for the month of August there is usually a large decline in the percentage conditions; and this year that letter indicated that the decline would not be as much as usual.

192 Q. Suppose the figure for one month is 90—that is, that the anticipated crop is expected to be 90 per cent of a full crop: What would you say might be a slight decline the next month?

A. That would be comparative, of course. That is, if the yearly declined showed twenty points, why, a five point decline would be a slight one. It would be comparative with past years.

Q. Suppose the figure was 90, let us say, in August, and you are told there is going to be a slight decline in September—about what would you expect it to be?

A. It would depend entirely on the comparison with other years as to what you would figure would be a slight decline.

Q. Take it in comparison with other years; you know what previous years had been, I suppose?

A. No; I have not got that all in my head; but I know that in August usually it is expected that the condition will show a pretty good decline over the month previous.

Q. When you say a "pretty good decline," what do you mean, from 90 to 85 or from 90 to 80, or what?

A. I do not know what the average is, but it is a month that generally shows a deterioration from dry weather, summer dry weather.

Q. That does not help me a particle, Mr. Van Riper. You said just now you would expect a very good decline on account of August being a bad month and drying up the crops.

A. Yes sir.

Q. Now, what did you mean when you said "a very good decline"—how many points?

A. Well, I don't know. I would have to compare it with past years—the average ten year condition, for instance.

Q. Now, I have the letter of Mr. Peckham of the next day——

Mr. BEACH: What is the date, Mr. Worthington?

Mr. WORTHINGTON: August 31st.

Mr. ADKINS: Which letter? There are two letters of that date.

Mr. WORTHINGTON: Oh yes, this is the one which is not headed "No. 2."

Mr. BEACH: That is the Exhibit Number.

By Mr. WORTHINGTON:

Q. "About 85," it begins. What did you understand by these figures?

A. Well, I could not understand anything without comparing and reading the rest of the letter.

Q. Without comparin- what?

A. Without comparing it with other months, other years, or reading all the letter. What does he say after that?

Q. "About 85. It will surprise everybody, and cause big drop, is opinion of best experts. There will be things doing sure. A drop of only (about) six points. This is *is* one of the highest
193 averages for this (Sept.) month ever known. Is way above the ten year average. Tear this up. Do all you can. F."

A. I understood it would be very bearish report from that.

Q. What did you understand about the figures by that expression "about 85"?

A. I understood it would be considered very bearish, and would make the market break.

Q. Did you understand or not that that meant that the Government crop report would show for December that the prospective cotton crop report would be 85 Per cent?

Mr. BEACH: You mean September, do you not? You said "December."

Mr. WORTHINGTON: Did I say "December"?

Mr. BEACH: Yes.

Mr. WORTHINGTON: I meant September.

A. Yes sir.

By Mr. WORTHINGTON:

Q. And you understood then that Mr. Holmes had informed Mr. Peckham on the 31st of August that the figure for the September report would be about 85?

A. Yes sir; and I can give you little more information how he got that if you wish it.

Q. I would be glad to have all the information you can give me on that subject.

A. Mr. Peckham told me that Mr. Holmes went in and opened certain reports unknown to Mr. Hyde that night, and was able to tell that farther in advance than usual, and that he resealed them, and that Mr. Hyde never knew about it.

Q. Did he tell you what reports he had opened?

A. No sir.

Q. That is, what reports Mr. Peckham said Mr. Holmes had opened?

A. No sir.

Q. When was it Mr. Peckham told you that?

A. When I saw him next after that.

Q. When did you see him next?

A. I am not positive as to the date.

Q. This reads "is opinion of best experts." Did you have any understanding at the time you received this, or at any other time, of what he meant by saying that that was the opinion of the best experts?

A. No sir, but I assumed he meant Mr. Holmes, because that was the only one that I understood he was here in conference with.

Q. You understood, when he said that that was the opinion of the best experts, that he meant Mr. Holmes alone?

A. Yes sir.

Q. And that it was not his opinion at all, but that he had stolen it out of the papers?

A. No sir—how is that question?

Q. I say, when he said "That is the opinion of the best experts," you understood that to mean that it was not anybody's opinion, but that it was Mr. Holmes' knowledge from opening envelopes?

A. I think that opinion refers to the effect it would have on the market, if you will read the letter carefully.

Q. "It will surprise everybody and cause big drop, is opin-
194 ion of best experts."

A. It would break the market—that was their opinion—because it would be a surprise to the cotton trade.

Q. You understood, that Mr. Peckham, then, had communicated this information to various experts and had received from them the opinion that that would be the effect?

A. No sir, I did not understand anything of the kind. I did not assume that he was in conference with anybody here except Mr. Holmes.

Q. Then how do you account for his saying to you that that was the opinion of the best experts, if he was simply telling you that Mr. Holmes——

A. I assumed that he did not want to mention Mr. Holmes' name, and merely thought I would understand who he meant.

—. He was writing this, then, so that somebody else who might see it would not know what it meant. That was your idea?

A. I don't know what his idea was.

—. What was your idea about what his idea was?

A. I don't know what his idea was?

Q. Very well. I see this says, "Tear this up." Did you tell him you had torn it up?

A. I never referred to it.

Q. Why did you preserve it when he had asked you to tear it up?

A. Why, I never intended to preserve any of them, but put them in my safe, in my private box, intending to destroy them when I got around to it; but I neglected it, and it has not been done.

Q. Was that the reason you took the paper that was torn up out of the waste-paper basket to preserve it?

A. No sir. At that time I had reason to suspect Mr. Haas.

—. Suspect him of what?

A. Suspect him of being unfriendly to me.

Q. Your view about that was not changed was it when you were deceived in June?

A. He did not deceive me about the report.

Q. What did he deceive you about?

A. About Price's operations, and about his putting up his share of the money.

Q. Then why was it that although Haas has treated you in that way, given you that reason to suspect him in December, and then

went back on you, as you understood, in June, that you kept his name back from the Secretary and gave Mr. Holmes'?

A. Because I gave no names or no information that I did not have to give. I reserved the right to refuse to answer questions, and I did refuse to answer questions that they asked me.

Q. What questions?

A. Well, I refused to answer several questions.

Q. You afterward did answer them to somebody, I suppose, representing the Government?

A. I was subpœnaed and put under oath to tell the truth, the whole truth and nothing but the truth; and that is the reason why I am trying to tell it now.

Q. Thank you. Do you mean you were subpœnaed here?

195 A. Yes sir.

Q. Well, this is not the first time on the stand that you have told somebody representing the Government this story; is it?

A. I have not told all of it to anybody before.

Q. What part of it did you not tell anybody until you got on the stand here?

A. Well, there is a good many of the details that I have not told before.

Q. Well, you told long ago, did you not, to somebody representing the Government, that you had this arrangement that you say was made on the 9th of August or on the 7th of August?

A. I told certain parts of it.

Q. Did you tell them, before you were on the stand *p*—Did you tell anybody representing the Government about the division of money that was made on the 11th or 12th of December?

A. I told Mr. Beach recently about it.

Q. Oh, well, you told him about it long before did you not, Mr. Van Riper?

A. Not all the details.

Q. Did you not tell him about this division of money? That is what I am asking you about now.

A. Not all of it.

Q. Did you not produce the checks?

A. I produced certain checks; yes.

Q. Checks showing that division?

A. Some of them.

Q. When was it that you produced some of them to Mr. Beach?

A. When I was subpœnaed to appear before the Grand Jury.

Q. You went as a witness before the Grand Jury?

A. Yes sir.

Q. Before that you had had an interview with Mr. Beach, I suppose, telling him about these things?

A. What is the question?

Q. Before that you had had an interview with Mr. Beach and told him about these transactions?

A. My recollection is that I never saw Mr. Beach until I saw him in the Grand Jury room.

Q. Had you seen anybody else representing the Government? I am not sticking about names?

A. No sir; except Mr. Wilson and Mr. Walsh.

—. Had you sent your attorney dow- here to see them?

A. No sir, not before I was subpœnaed dow- here; except that Mr. Taylor came with me the day that I came down to see the Secretary.

Q. You had no understanding with anybody that you were not to be prosecuted?

A. I had no understanding of any kind, except that when I went before the Grand Jury I made a statement that I would reserve the right to answer or refuse to answer such questions as I say fit, the first time I was subpœnaed dow- there. The second time I was subpœnaed dow- there Mr. Beach read or entered in the minutes of the Grand Jury that any information that I gave the Grand Jury would not be used against me, in that court or any other court. That is as far as any understanding I have ever had with anybody is concerned.

196 Q. You did not know how it happened that you were not indicted when Mr. Holmes, Mr. Haas and Mr. Peckham were?

A. I always assumed that I was not liable to indictment.

Q. That you had not done anything that was wrong?

A. Yes sir.

Q. And therefore you did not require any arrangement of that kind?

A. No sir.

Q. How long an interval was there between the time you came down first and the second time for the Grand Jury?

A. Oh, it was—I could not say; it was some little time.

Q. You told more the second time than you did the first; did you not?

A. Yes sir.

Q. What had happened in the meantime to change your views about it?

A. Nothing.

Q. Did not Mrs. Peckham come down here at the second time and use her influence with you?

A. Well, I don't know, whether she was down here before I was down; I don't think she was. I think I was down here before Mrs. Peckham came here.

Q. Did you not meet her here before you went before the Grand jury the second time?

A. No sir.

Q. You did not see her here in Washington at that time at all?

A. No sir.

Q. Now, as a matter of fact, did you not come to Washington on the same train with her?

A. No sir.

Q. You are clear about that?

A. Yes sir.

Q. I think you mentioned yesterday that you had an attorney named Brainsbee—John W. Brainsbee?

A. I can explain, I think, if you want me to, where you got that idea. Mrs. Van Riper came down with her.

Q. Go on, sir, if you are a mind reader, and tell me how I got that idea.

A. Well, I suppose that was the way you got it.

Q. About Mrs. Peckham, you mean?

A. Yes sir.

Q. Well, if you want to make any explanation about it, that is your privilege.

A. I say, Mrs. Van Riper and her and one of my daughters came down here together.

Q. Was that between the time you were first before the Grand Jury and the second time?

A. I think it was after I was there the second time. I am not positive. That is my recollection.

Q. Did you make a stipulation with the District Attorney, Mr. Beach, or somebody in his office, that they must agree that Mrs. Peckham must be protected in the matter before you would answer any further questions?

197 A. No sir; I never mentioned it to anybody.

Q. You had no understanding of that kind?

A. I never thought of such a thing.

Q. I was about to ask in reference to Mr. Brainsbee. Do you remember authorizing Mr. Brainsbee to publish a statement in answer to something that had appeared in the New York World about the 11th of July, 1905? (Exhibiting paper to witness.)

Mr. BAKER: Do not state any of the subject matter of the paper, Mr. Van Riper.

Mr. WORTHINGTON: No I only want him to exercise his privilege of looking at it before I ask him anything about it.

By Mr. WORTHINGTON:

Q. Do you remember authorizing that publication by your attorney?

A. I remember authorizing Mr. Brainsbee to make a request for the publication of that. I do not remember the exact wording of it, but I will say now that it is all true.

Q. Very well. I want to call your attention particularly to this paragraph.

Mr. BAKER: Let us see what it is.

Mr. BEACH: Let us look at it, sir, please.

Mr. WORTHINGTON: Yes, I want to mark it for you. It is this part of it only that I want to call attention to. (Indicating.)

Mr. BAKER: I do not see that the offer in any way contradicts anything that the witness has testified to, and I cannot imagine what it is for; and therefore I object to it on the ground that it does not.

The COURT: I will look at it, if you wish to press the offer. Is it all or only a part of it that you offer?

Mr. WORTHINGTON: Only a part of it, the part that I have marked.

I do not care anything about the rest of it. It is all on that subject—the part of it I have marked here (indicating).

(Counsel upon both sides thereupon conferred with the court out of the hearing of the jury.)

Mr. WORTHINGTON: The part of this, gentlemen, which I offer and am permitted to read is this: It is a statement in the New York World of July 11th, 1905——

Mr. BAKER: There is a question of the witness, I believe. You want to ask him, I believe, whether he made that statement? Is that the question?

Mr. WORTHINGTON: He has already said he authorized that statement to be made, and that it is all true.

The WITNESS: I beg your pardon, Mr. Worthington, I said I did not remember the exact wording of the statement, but that I say it is true if you want to ask me.

By Mr. WORTHINGTON:

Q. Did you authorize Mr. Brainsbee to make any statement on your behalf in reply to what had happened in the World a day or two before?

A. I authorized him to ask them, the World, to retrace certain statements.

The COURT: Suppose you read that clause to him and ask him if he authorized that statement.

By Mr. WORTHINGTON:

Q. Did you authorize Mr. Brainsbee, at the time I have stated, to put this in the World as an answer to something that had appeared in the World a few days before: "I am authorized and requested by my client, Mr. Van Riper, to inform you that he never at any time paid Holmes $80,000 or any other sum for betraying the
198 government of for any other purpose, and that he never paid any sum to any person whatever in the employ of the United States Government for information of any kind whatever?

A. I will say that I never did.

The COURT: The question is whether you authorized that statement.

By Mr. WORTHINGTON:

Q. The question is whether you authorized Mr. Brainsbee to put that statement in that paper at that time.

A. I do not remember the exact incident, but I suppose I did.

Q. Do you recollect or know whether you took enough interest in these matters to see that when it was in the paper the next day, purporting to be authorized by you through your attorney?

A. I have forgotten about it.

Q. You were living at New York at the time?

A. Yes, sir. I saw so much in the papers at that time that I cannot remember all that they said.

Q. Very well. You have no recollection that you made any complaint to anybody that that was not what you had authorized?

A. No, sir, because it is true.
Q. It is true?
A. Yes sir.
Q. I want to show you now the next letter of Mr. Peckham of August 31st, headed: "10:30 P. M. Letter No. 2." Either my mind is a little obscure, or the letter is. "Party for Price here to-night to make sure of figures tomorrow (Thursday). They are going to sell all they can without breaking market if they can. It may break tomorrow." I suppose that is intended for "It may." "Saturday soon as report is out (perhaps before) they cut loose—selling everything." You understood from that that on the following Saturday Price was going to sell cotton; did you?
A. Going to sell on Thursday, this says—"Party for Price here tonight to make sure of figures tomorrow (Thursday). They are going to sell all they can."
Q. "Saturday soon as report is out (perhaps before) they cut loose." What does that mean, then?
A. That they were going to sell all they could.
Q. On Saturday?
A. Well, it meant after the report was out they were going to sell.
Q. What does "Saturday" mean?
A. I don't know. He may have gotten mixed in his days there. He says here——
Q. We will go over the whole of it. "Selling everything in sight. Get in tomorrow early. Be sure to close out Friday as soon as effect of report has been shown. No market Saturday (holiday) and none Monday, as I understand. This is best chance ever will have." Will you explain what he meant by "Saturday" soon as report is out (perhaps before) they cut loose"?
A. It is very easy to see that he made a mistake and used the word "Saturday" there instead of "Friday," which he used later. It is very evident on the face of it. The report could not be—
199 he says later, "Close out Friday."
Q. It could not mean then that Price was going to sell out on one day and he wanted you to close out the day before?
A. He says: "Begin selling Thursday: Price begins selling Thursday." He says later: "No market Saturday"; so you can see that he did not mean to do anything Saturday.
Q. Well, that is your explanation?
A. Why, on the face of it you can see that.

Mr. WORTHINGTON: Very well.
Mr. BEACH: Give me the number of that exhibit, please.
Mr. WORTHINGTON: No. 9.

By Mr. WORTHINGTON:

Q. Did Mr. Holmes ever lend you any money to operate the market on at all?
A. No, sir; no, sir.
Q. Did you state to one of the Secret Service men about the time this matter came out that he had?
A. No sir.

Q. Did you talk with any secret service men about the matter?

A. I talked to the secret service man about several matters.

Q. Do you remember Mr. Walsh?

A. But I can straighten you out now; I know what you are driving at. Mr. Holmes loaned Mr. Peckham $15,000, and I went security for it, and put up stock to secure Holmes for Peckham.

Q. When was that?

A. I have got Holmes' receipt here, if you want it, and you can put it in evidence.

Q. When was that?

A. On the 23rd of September.

Q. Let us see the receipt, please. Have you got the paper?

A. Yes, sir; I have several papers here that you can have if you want them, later.

Mr. WORTHINGTON: I appreciate your kindness.

The COURT: It is better not to exchange courtesies during the examination.

The WITNESS: Here it is.

Mr. WORTHINGTON (reading): "Washington, D. C., September 23rd, 1901. Received of L. C. Van Riper, fifty thousand shares of Thunder Mountain Gold & Silver Mining & Milling Company, together with note for $15,000, due six months after date; said stock to be held as collateral and to be returned on payment of note. E. S. Holmes, Jr."

By Mr. WORTHINGTON:

Q. You say that this is Mr. Holmes' handwriting and his signature?

A. Yes, sir.

Q. Now, what was that transaction?

A. Just what it says.

Q. I do not see anything about Mr. Peckham here.

A. Well, I went security, put up this stock to secure the money. Mr. Peckham arranged to borrow the money from Mr. Holmes.

Q. But did Mr. Holmes give you his note for $15,000?

A. No, sir; I gave him my note or Peckham gave him his with my endorsement. I forget how it was fixed.

Q. This says "together with note for $15,000 due six months after date." Did Mr. Holmes give you his note?

200 A. No, that is his receipt to me.

Mr. BEACH: He loaned Peckham the money.

The WITNESS: Later that note was paid, and the stock returned, and the receipt taken up, or the note taken up.

By Mr. WORTHINGTON:

Q. Well, we have not heard anything about the Thunder Mountain Gold & Silver Mining & Milling Company until now.

A. No, sir.

Q. What was your connection with that institution?

A. Only that I paid $50,000 cash for that stock.

Q. To whom did you pay $50,000 for the stock?

Mr. BAKER: I object to going into that, if the Court please.

A. E. H. Dewey.

The COURT: He has answered that. We will not follow into this very far.

By Mr. WORTHINGTON:

Q. Is there any connection between this transaction and these cotton deals that you have been telling us about?

A. None whatever.

Q. They are entirely separate and independent transactions?

A. Yes sir.

Q. Did you have any other transactions with Mr. Holmes that related in any way to gold mines?

A. None except what I have testified to.

Mr. WORTHINGTON: I do not remember any you have testified to.

The COURT: Well, there is testimony about it.

By Mr. WORTHINGTON:

Q. I remember that you referred to the transaction in which you said a paper was shown you which purported to represent a mining transaction which was to account for Mr. Holmes getting some money.

A. Yes, sir; that is all I know about it.

Q. That is the only one?

A. Yes sir.

Q. And that was not a transaction, but purported to represent one that did not exist?

A. Yes sir.

Mr. BEACH: It is on pages 973 and 974, Mr. Worthington.

Mr. WORTHINGTON: I remember that.

Mr. BEACH: I thought you said ——

Mr. WORTHINGTON: I did not suppose that would be referred to as a transaction with Mr. Holmes about mines, because he says he did not have any.

Mr. BEACH: He said so there.

By Mr. WORTHINGTON:

Q. In the letter, Exhibit 17, which appears to have no date, there is the expression "Also party will be put in for usual ten thousand." Did that refer to ten thousand bales or ten thousand dollars, or what?

A. Ten thousand bales.

Q. I think you said that that meant that Mr. Price would put Mr. Holmes in for ten thousand bales?

A. Yes sir—Mr. Holmes and Mr. Haas, I understood.

201 Q. Well, Mr. Holmes and Mr. Haas?

A. Or Haas would be put in; I understood Mr. Haas would be put in.

Q. And that would represent about five million pounds?

A. Well, there are 500 pounds to a bale.

Q. Had you had any talk with Mr. Holmes or anybody else by which you understood what "the usual ten thousand" meant?

A. Yes sir.

Q. And what was that?

A. He told me that Mr. Price carried Mr. Haas for ten thousand bales on every report; and as I have already testified, he told me that up until that date he had received $55,000.

Q. $55,000 which he then had in a safe deposit box?

A. Yes, sir; and later, the night that I came down here in October, or just before October, the night I met Holmes in the park with Mr. Peckham, he told me that—no; I am mixed on the date there.

Q. Well, get unmixed, if you can, and let us have it straight.

A. I am not positive when this was; but I think on the next visit here in October. He told me that Haas had met him in the park and had put a package in his pocket and told him to count it after he got home; and when he got home he counted it, and there were forty-nine thousand-dollar bills in the package.

Q. You have not told us about that before.

A. No sir.

Q. Had you forgotten about it?

A. No sir.

Q. Why did you not tell about it on your direct examination?

A. I was not asked about it.

Q. Have you ever told about it before to anybody representing the Government?

A. I think I told Mr. Beach about it.

Q. When?

A. Recently.

Q. Before you went on the witness stand?

A. Yes sir.

Q. In this same letter there is this expression: "Colonel says he will put up fifty points tomorrow sure." "The Colonel," I understand you, you understood referred to Mr. Holmes?

A. Yes sir.

Q. Why did you understand, or what had taken place between you and Peckham or you and Holmes that will enable you to enlighten me as to what was meant by saying "Colonel says he will put up fifty points tomorrow sure"?

A. Well, I understood that that was the Colonel's guess that the market ought to advance on Price's operations.

Q. You did not understand it to mean that he was going to doctor the returns at all and force a figure?

A. No at that time, no sir.

Q. I wish you would look at that paper and tell me if you can fix the date of it. That is Exhibit 17.

A. I can give the date by another letter that is with it there. This is the same letter that was handed to me before, and I cannot tell whether it was received just before or just after that other
262 letter. It was right about the same time I think just after.

Q. You have spoken about a check for $300 being missing,

Mr. Van Riper—part of that $2100 profit in September, I believe. Can you explain what it is that that check is not to be found?

A. Yes sir.

Q. Do you know what Bank it was on?

A. On the Second National Bank of Hoboken, New Jersey; and the reason I could not find it was this. This $670 check with Mr. Holmes' endorsement I brought down here when I came before the Grand Jury, and I never thought of the importance of the other two checks until just recently, when Mr. Beech asked me to hunt them up; and this one was the only one I could find of the two. I had sold out the mailing agency, and had moved my office, and had destroyed lots of old worthless stuff there, and I do not know where it is.

Q. In this letter, the accompanying envelope of which is dated or postmarked "September 26th, 1904" Mr. Peckham says to you (this is not signed):

"Long conference Sunday between Colonel and man. 'S' has done something 'P' does not like." I think you have explained that "S." means Sully and "P" Price.

A. That was my understanding, yes sir.

Q. "Is going without S knowing it, if possible, to put price up high as possible." What does that mean "is going without S knowing it, if possible, to put price up high as possible"?

A. Well, at that time Mr. Sully was issuing bear letters, and Mr. Price was what they call bulling the market, and Peckham had told me that they were in reality working together; that Mr. Price was merely using Mr. Sully as a blind to fool the public, and that this letter would indicate that they had had some kind of a misunderstanding.

Q. This letter is postmarked, as I see, with the date that you began your operations in September. Had this letter anything to do with that?

A. I assume it had.

Q. And that related entirely to transactions or operations between Price and Sully, and not in reference to Mr. Holmes—does it not?

A. Yes, sir.

Q. About that meeting in Chicago which you have told about was that prearranged between you and any of the other parties you met there?

A. I met Mr. Haas on the train coming to New York just before that, and he told me that Mr. Holmes would be there on this date, and wanted me to come back and be there, too, so I went back, and he was there.

Q. Was anything said about what you were to meet there about?

A. No, sir.

Q. Did the meeting in Chicago have anything to do with anything about these cotton speculations or information?

203 A. Nothing at all, except just a friendly meeting—just a general talk, a friendly meeting, that was all. We had arranged everything in October, the early part of October.

Q. And there was no further arrangement made in Chicago?

A. No, sir.

Q. Nothing except incidental talk about the matter?
A. So far as I recall now.
Q. Did you have any business talk with Mr. Holmes there about anything?
A. No, not specially.
Q. Who were the whole party that were there?
A. What is that?
Q. Who constituted the entire party there?

The COURT: Perhaps we had better stop here.
Mr. BEACH: If your Honor pleases: Before recess, I would like to state that it is agreed with the other side and ourselves that the cross-examination of this witness may be suspended after recess in order to take up some New York bankers who have been waiting here for some time to go on, and who will not take much time.
The Court thereupon took a recess until 1:5 o'clock P. M.

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Copied from Stenographer's Minutes, Book 10, Pages 1209 to 1218.

205 LEWIS C. VAN RIPER, the witness whose examination was suspended as heretofore stated, thereupon resumed the witness stand, and his cross examination was continued, as follows:

By Mr. WORTHINGTON:

Q. I was speaking to you, Mr. Van Riper, when we took the recess, who composed the party at Chicago in November, 1904—all the persons you knew who were there?
A. I know a great many people in Chicago.
Q. I mean those who were of this party?
A. Mr. and Mrs. Peckham, Mrs. Tompkins—do you mean the party that went to the World's Fair?
Q. No; I mean the party that were associated together at Chicago.
A. Mr. Haas, Mr. Peckham, Mr. Holmes and myself.
Q. Was Mrs. Peckham in Chicago?
A. Yes sir.
Q. While you were in Chicago on that occasion did you have any business to transact with reference to mines with anybody, or mining interests or business?
A. I don't recall that I did.
Q. Do you remember going to the Hyde Park Hotel, and Mr. Holmes going with you, and seeing some men there in reference to some mining business?
A. Yes, I do remember that.
Q. You remember that?
A. Yes sir.
Q. Mr. E. T. Staples?
A. Yes sir.

Q. And a Mr. Ament?

A. I have forgotten his name; I remember Mr. Staples.

Q. When you went to Chicago you had not expected to see those men?

A. No sir.

Q. That was something that came up after you were there?

A. Yes sir.

Q. Did Mr. Holmes have anything to do with it?

A. No sir.

Q. He went with you to see these men; did he not?

A. Yes sir.

Q. And they had some samples of gold from the mines?

A. Yes sir.

Q. Which purported to be from the mines?

A. Yes sir.

Q. Now, the World's Fair party—who composed that? I mean the World's Fair party at St. Louis a little later on. (To counsel for the Government.) Have you got that hotel register here Mr. Baker?

Mr. ADKINS: Yes sir; I think that is it. (Handing book to Mr. Worthington.)

By Mr. WORTHINGTON:

206 Q. I think Mr. Baker or Mr. Beach showed you this?

A. Yes sir.

Q. Were Mr. and Mrs. Peckham of that party?

A. Yes sir.

Q. And you?

A. Yes sir.

Q. And Mr. Haas?

A. Mr. Holmes and Mr. E. L. Holmes and Mrs. Tompkins.

Q. How about a Mrs. Tompkins?

A. Yes sir.

Q. I think you were asked if you could identify the handwriting of these entries in the book?

A. Yes sir.

Q. What do you say as to the name "Mr. and Mrs. F. A. Peckham, N. Y.?" Do you recognize the handwriting?

A. Well, first I did not, because it was evidently written with a very poor pen; but I think these are my own handwriting.

Q. The name "Mr. and Mrs. F. A. Peckham?"

A. These three signatures.

Q. And "L. C. Van Ruper" and "M. Haas?"

A. Yes sir.

Q. How about the "Mrs. M. E. Tompkins?"

A. I do not think that is in my handwriting.

Q. Do you recognize the handwriting of anybody whose handwriting you are acquainted with?

A. It looks like Mr. Holmes'.

Q. And the names on the other page, of Mr. Holmes and L. L. Holmes, are in his handwriting, I think you said?

A. I think so.

Q. Have you ever noticed a similarity between your handwriting and that of Mr. Holmes?

A. No sir.

Q. I would like to understand a little more clearly than I do now, Mr. Van Riper, what was your information as to the control that Mr. Holmes had and exercised over Mr. Hyde when he was there about these reports. I think you have said at one time that you were informed that Mr. Holmes could control Mr. Hyde in those matters?

A. Yes sir; Mr. Holmes told me that he made up the reports himself, and Mr. Hyde always took his recommendations.

Q. Did you have any information different from that during the time you were connected with these operations?

A. No sir.

Q. Who was it told you, then, that Mr. Holmes had arranged that if he did not get Mr. Hyde to do what he wanted to, as I understand, that he would do something with the window Blind to indicate?

A. I heard Mr. Holmes make the plan to Mr. Peckham, and saw him draw a diagram showing the position of the curtain in his own handwriting—what the different positions of the curtain meant.

Q. What I am trying to get at is whether there was any explanation of what was necessary, if Mr. Hyde always did what he wanted him to do?

A. It was not necessary; it was merely a precautionary measure.

207 Q. Just in case Mr. Hyde should do something he had never done before?

A. Yes sir.

Q. Where was it that that interview about the window-blind business took place?

A. It took place in the park back of the White House.

Q. And when?

A. One Sunday just before the October cotton report.

Q. Early in October then?

A. It was the Sunday before the October report; it was made specially for that report.

Q. That report was made, we see here, on the 3d of October. Was it on the 1st or 2nd of October?

A. It was the Sunday before the 3rd.

Q. The Sunday before the 3rd of October, 1904?

A. Yes sir.

Q. And what time in the day?

A. I could not say positively. It was, I think, though, in the afternoon.

Q. You do not remember whether you went back to New York or remained here that day?

A. I think I went back that night.

Q. You cannot tell how long it was before you went back that this happened?

A. You mean that day?

Q. I want to know at what hour of the day it was that you say

this talk about arranging the curtain as a signal took place at the White House lot?

A. I cannot tell the hour of day: I remember the circumstances perfectly.

Q. Well, I will drop that if you say you cannot approximate the time of day at all, Mr. Van Riper.

A. No; I do not remember the time of day that this occurred.

Q. How long were you here on that trip; how many days?

A. I think I came down on Saturday and went back Sunday night.

Q. Where did you stop?

A. I think I stopped at the Willard.

Q. Is it possible that that could have been just the day before the report?

A. It may possibly be.

Q. What do you say?

A. It may be possible.

Q. Was anything said about Mr. Hyde having given any indications of not following the will of Mr. Holmes about the report?

A. No sir.

Q. Did Mr. Holmes tell you how long he had been dictating to Mr. Hyde what he should put in these reports?

A. I do not think the time was mentioned. He just made a statement that Mr. Hyde always took his recommendations.

Q. I think you have said that you understood all the time that there was nothing wrong in anything that was going on about this matter so far as you knew?

A. I don't know as I said it that way?

Q. Well, was it a fact or not?

A. I said I didn't think I was doing any wrong.

Q. You heard this arrangement that was made, you say,
208 about the window shade?

A. Yes sir.

Q. And you knew that was to enable Mr. Peckham to communicate with you?

A. Yes sir.

Q. So that you could make the deals and divide the money with Mr. Peckham and Mr. Haas?

A. Mr. Haas was not in the deal at that time.

Q. Well, with Mr. Peckham then?

A. Yes sir.

Q. And you did not think, to your mind, there was anything wrong about that on your part?

A. Well, when a man is speculating he will get information the best way he can.

Q. And there is nothing wrong in his getting it from an official whose duty it is not to give it to him? That is your idea about it, is it?

A. Well, I don't know.

Q. Do you know anybody who does?

A. I don't know as I would want to say now.

Q. You would not want to say just now?

A. I say, I don't know as I would be competent to say at this time.

Q. I have understood you to say you do not think you were doing anything that was wrong?

A. I did not.

Q. I want to get at your idea of moral principles?

A. At that time I did not think I was.

Q. Did you come down here again about the middle of October 1904?

A. I came down, I think, just before the middle of October.

Q. Where did you stop then?

A. I stopped at the Willard.

Q. About how long were you here on that occasion?

A. *There* was the occasion I have already testified to, that he brought Mr. Haas to my room. I don't recall how long I was here.

Q. Do you remember being in Washington when Mr. Holmes was out of town that fall?

A. I don't remember what occasion you refer to. I was here several times.

Q. Did you not bring your children with you—come down here and bring your children with you while Mr. Holmes was out of Washington?

A. I don't remember whether Mr. Holmes was here or not when I had them here. I brought them down on one occasion.

Q. That fall?

A. Yes sir.

Q. Where did you stop when you had your children with you?

A. I stopped at the Willard.

Q. How long?

A. My recollection is that they were here—they came down
209 on Saturday and we went back Sunday night.

Q. And what was the object of that trip?

A. I could not say now. I know I came down to see Mr. Peckham.

Q. You say you did come or you may have come to see Mr. Peckham?

A. Yes sir, I came to see Mr. Peckham, yes.

Q. At the time you brought your children with you?

A. Yes sir.

Q. And did you see him?

A. Yes sir.

Q. Was he stopping here in Washington at that time?

A. Yes sir.

Q. At the Willard?

A. Yes sir.

Q. Did you have any business with him at that time in reference to that cotton crop business?

A. I had quite a good deal of business with him.

Q. I am speaking of the time, or trying to speak of the time, when Mr. Holmes was not here.

A. Well, I am not sure whether Mr. Holmes was here on that trip or not.

Q. Did you see him?
A. I don't recall whether I did or not.
Q. On this trip to St. Louis was there any object connected with what we are investigating here in the meeting there?
A. No sir.
Q. Or was it simply to go to the World's Fair?
A. Just simply a trip to the World's Fair.

Mr. WORTHINGTON: Have you got the dates of the arrival of these parties at Chicago in November? I have forgotten them, and I do not want to take the time to hunt them up if you have got them.
Mr. ADKINS: I think they were there from October 27th to November 1st. (After examining books) One of them is October 27th.
Mr. WORTHINGTON: Which is October 27th.
Mr. ADKINS: Mr. Haas, Chicago, at the Auditorium.

By Mr. WORTHINGTON:

Q. While they are looking for that Mr. Van Riper, I would like to ask you a little more particularly about your business in New York.

Mr. ADKINS: I have that date now, Mr. Worthington—November 2nd, E. S. Holmes and L. L. Holmes.
Mr. WORTHINGTON: Have you the time Mr. Van Riper registered there?
Mr. ADKINS: I have not that.
Mr. WORTHINGTON: What is the date that Holmes registered?
Mr. ADKINS: November 2nd.
Mr. WORTHINGTON: Now I want to find when Mr. Van Riper registered there.
Mr. ADKINS: I have not that.

By Mr. WORTHINGTON:

Q. Can you tell the date you arrived at Chicago on that occasion?
210 A. I think I arrived the morning we left for St. Louis. We left for St. Louis that night.
Q. You were there then with them only a part of a day?
A. Yes sir.

Mr. WORTHINGTON: I want to go to another subject now, your Honor. I have not very much more to ask him.
(Counsel on both sides thereupon conferred with the court out of the hearing of the jury.)

(The Court thereupon adjourned until tomorrow, Thursday, June 20th, 1907, at ten o'clock A. M.)

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Copied from Stenographer's Minutes, Book 11, Pages 1237 to 1257.

212 (Book 11, Page 1237.)

L. S. VAN RIPER resumed the stand for further cross-examination.

By Mr. WORTHINGTON:

Q. I was about to ask you, when we adjourned yesterday, about your business since you have been in New York. Do you know Mr. C. W. Morgan?

A. Yes sir.

Q. How long ago did you become acquainted with him?

A. I have known him as far back as 1898, I think, or early in 1899.

Q. Was he in business there under the name of C. W. Morgan & Company.

A. Yes sir.

Q. For how long?

A. I don't know how long he was in business. He was there a long time before I knew him.

Q. What business did he carry on?

A. The brokerage business.

Q. Where?

A. At No. 70 Broadway.

Q. Did you have any business relation with him except as a customer?

A. I traded in stocks with him.

Q. Did you send out circulars to a great many people of this character:

Lewis C. Van Riper, Investment Broker, 11 Broadway, New York.

FEBRUARY 6TH, 1900.

Mr. Henry Johnson, Rahway, N. J.

DEAR SIR. Replying to yours of recent date, am mailing you today my latest edition of "Ins and Outs of Wall Street" receipt of which kindly acknowledge. If you will note carefully my method of operating as explained on page 73 and in accordance with same open an account under my management with some good exchange house here, preferably C. W. Morgan & Co., 71 Broadway. Or Mitchell & Co., 60 Broadway. I am positive we can secure big results in our present markets as they were never in better shape for profitable trading and practically guarantee handsome returns on capital properly invested. As I have facilities for handling a number of additional accounts I would be very glad to have yours.

Hoping to hear from you by return mail, I am,

Yours very truly, LEWIS C. VAN RIPER.

213 Mr. BAKER: I object to that on the ground that it is immaterial.

The COURT: I do not see how it is material.

Mr. WORTHINGTON: Is it not material to arrive at the character of the business in which this witness has been engaged, for the purpose of throwing light on his credibility. It has not been very long since the District Attorney went into the proceedings of a witness I put on the stand covering practically the period of his whole life.

The COURT: I think you have been allowed full latitude on that subject. I do not see how any answer to this could help the jury.

Mr. WORTHINGTON: I would like to make a prof-er of what I expect to show on this subject.

The COURT: You may come to the bench and make it.

Mr. WORTHINGTON: I offer to show that he sent out thousands of circulars of this kind to various people.

Mr. BEACH: What is the date of that?

Mr. WORTHINGTON: I have not asked him about the date.

The COURT: Then it will be taken as against you, unless you make it more specific.

Mr. BAKER: You say you are not offering the date?

Mr. WORTHINGTON: I say it was as late as 1900. I offer to show that he sent out thousands of circulars to people of this kind to induce them to send money to Morgan & Company, he being in secret association with Morgan & Company to practically swindle the people who sent their money to Morgan & Company, by pretending to have investments when none were in fact made. In other words that he was engaged in a swindling business.

The COURT: How is it expected to prove that there was a swindle.

Mr. WORTHINGTON: By his getting people to send money to Morgan & Company on the supposition *they were* going to be invested in stock speculations, when, as a matter of fact, it was not invested at all.

Mr. BAKER: Are you going to prove that he had knowledge of that fact?

Mr. WORTHINGTON: That is my information. I expect to prove also that Morgan & Company failed for millions of dollars, to these dupes; that Morgan was arrested and the New York Sun thereupon published an account denouncing him as a scoundrel on account of these transactions; that he brought suit against the Sun for libel and the Sun defended on the ground that he was a swindler; that issue was joined, there was a trial and the jury adjudicated that he was a swindler, and decided in favor of the defendant.

Mr. BAKER: To all of which we object.

The COURT: I think the latter part of it about the Sun publication and the suit for libel and the verdict would not be admissible. If you want to show, if you can get him to admit that he was engaged in swindling operations, I will let you try to do that.

214 Mr. WORTHINGTON: That is my information.

The COURT: You may ask him about that but not about the failure of Morgan & Company nor the publication in the Sun.

Mr. WORTHINGTON: Then, while we are here, I will offer sepa-

rately to cross examine him and prove by him the publication in the Sun denouncing him as a swindler; and subsequent proceedings up to the verdict of the jury.

The COURT: That may be excluded.

Mr. WORTHINGTON: I will have a separate exception to that.

The COURT: We will see what you get out of him about the swindling business; but at this time that is excluded.

By Mr. WORTHINGTON:

Q. I will ask you whether, about the year 1900 you did not send out thousands of circulars similar to the one I have just read?

Mr. BAKER: I object.

The COURT: You may answer that.

A. I wouldn't say that I sent out thousands; no sir.

Q. Did you send out hundreds?

A. I wouldn't say that they were of the same character as that.

Q. Why? Because you don't recollect?

A. I don't recollect. I do say that I was operating accounts with a dozen different brokers or speculators for people who wanted to speculate; but in every case they were members of either the consolidated exchange or the New York Stock Exchange.

Q. Did you sent out circulars of this general character in which you suggested that the parties to whom you sent the circulars should deal with C. W. Morgan preferably?

A. I don't remember that I did. I generally told them to send it to any responsible broker, and I would manage the accounts.

Q. Do you say that you did not send out circulars in which you used the expression, substantially, "preferably C. W. Morgan & Company, 71 Broadway; or Mitchell & Company, No. 60 Broadway"?

A. I don't remember that I ever sent that out.

Q. Will you say that you did not?

A. I don't say I did not. I say I don't remember. That was seven or eight years ago.

Q. I am asking you now in reference to 1900.

A. That was seven years ago.

Q. Did you not have extensive dealings of that kind with persons who sent their money to C. W. Morgan on your suggestion?

A. Yes, and several other New York Stock Exchange Houses at the same time. I would be glad to give you the names of them if you wish them.

Q. Did you not destroy or mutilate the books which you kept showing the transactions with these people?

A. I never did anything of the kind.

Q. In the year 1900?

A. No sir.

Q. While you were in Chicago, did you do business on
215 what is called the pyramid plan of stock speculating?

A. I don't remember.

Q. You don't remember?

A. No sir.

Q. After you went to New York did you operate under what is called the chart system?

A. I have always been a believer in charts, after I came to New York and I believe in them still.

Q. Are you sending out circulars about the chart system?

A. Yes sir.

Q. Did you send out circulars about the chart system?

A. Yes sir.

Q. What is the chart system?

A. It is a method of keeping a record of past fluctuations in the market.

Q. When did you begin to send out these circulars?

A. I think in 1898.

Q. Your memory is more distinct about that than about what you sent out in 1900?

A. I remember the chart, certainly, because I wrote a book relating to it, and they are used up to this day.

Q. Were you connected at any time with what is called the Beaumont Trust Company?

A. No sir.

Q. Do you know of the company?

A. I have heard of it.

Q. Do you know John C. Moore?

A. Yes sir.

Q. Did you ever have any relations with him of any kind?

A. I have had some business dealings with him.

Q. When?

A. I sold him a house in Weehawken, New Jersey, about 1899 or 1900; somewhere around there.

Q. Was that all the business dealings you had with him?

A. That was substantially all.

Q. Substantially all?

A. Yes sir.

Q. Then it was not all.

A. It was all that I recall.

Q. Are you acquainted with an organization or New York corporation called the Princess Club?

A. Am I acquainted with it?

Q. Do you have anything to do with it?

A. No sir.

Q. You never had anything to do with it?

A. I never had anything to do with it. I want to qualify that in this way, that I did guarantee a lease for a man by the name of McKenzie, who organized the Princess Club. I stood good for the lease, and I am on the guarantee still for the building that they opened these dining rooms in. He was a personal friend of mine, and he came to me and asked me to guarantee this lease, and
215 I did it.

Q. Is that a stock corporation?

A. I think it was.

Q. Did you have any stock?

A. No sir.

Q. You never had.

A. I don't recall that I ever had. I did make a loan on some stock once.

Q. Where — the rooms of the Princess Club?

The COURT: I do not think that is material, so far as I am advised.

The WITNESS: If there is no objection, I would prefer to answer.

The COURT: I do not think we will take up time further with this matter.

Mr. WORTHINGTON: Of course it is impossible for anybody to say whether time is taken up needlessly without knowing what information the cross examiner has.

The COURT: The cross examiner will have to disclose sufficient information to the court so that the court can see that there is some importance to it, without spending any more time upon it.

Mr. WORTHINGTON: My information is that he was a stockholder in that company. What I am trying to show is this man's relation with Mr. Peckham, and that the feeling that existed between him and Mr. Peckham at the time that he went and made these charges grew out of the fact that he had broken up Peckham's home and taken his wife from him. My information is that Mrs. Peckham was connected with him in relation to this Princess Club.

Mr. BAKER: He has answered, and said that he had nothing to do with it.

The COURT: It is a good ways around, without knowing whether you are coming to anything.

Mr. BAKER: Do you say that you wish to show illicit relations between this man and Mrs. Peckham?

Mr. WORTHINGTON: Yes.

Mr. BAKER: Then why don't you ask him the direct question?

The COURT: I do not think it is proper to get ideas into the minds of the jury by a long series of questions from which they may infer that there must be something to it or else the examiner would not be asking them, when there is no reason to feel that you have any expectation of his admitting them.

Mr. WORTHINGTON: I do not expect he will admit it if I ask him the direct question.

The COURT: That is the only thing that is admissible.

Mr. WORTHINGTON: It would be practically killing a cross examination if you had to tell the witness every time what you are after.

The COURT: But you are undertaking to lead up to a long series of questions, without expecting that, in the end, he will admit the only thing that will affect his credibility.

Mr. WORTHINGTON: He may answer the question so as to
217 show that the thing is true, although he denies it.

The COURT: I do not see how that could be in a matter like this with reference to illicit relations. I do not think that you ought to take time to go into a long series of questions from which you would ask the jury to infer there were such relations.

Mr. WORTHINGTON: Very well.

By Mr. WORTHINGTON:

Q. In the latter part of 1900, were you president of a company called the De Faye Company?

A. Yes sir; in the early part of 1904 and the latter part too, and I am still president of it.

Q. Is that located at 416 Broadway?

A. Yes sir.

Q. You say you were connected with it in the early part of 1904, and have been down to the present time?

A. Yes sir.

Q. Was that *connected* at any time by a person by the name of Madame De Faye?

A. No sir.

Q. No such person had anything to do with it?

Mr. BAKER: I object that that.

The COURT: That may be excluded.

By Mr. WORTHINGTON:

Q. Did Mrs. Peckham, the wife of the Mr. Peckham we are talking about, have anything to do with that company?

Mr. BAKER: I object to that.

The COURT: You may answer that.

A. No sir.

By Mr. WORTHINGTON:

Q. She was not concerned with it in any way?

A. She was not connected with it.

Q. Did she stay at the rooms of it.

Mr. BAKER: Q0bject.

The COURT: You may answer that.

A. No sir, she never stayed at the rooms.

By Mr. WORTHINGTON:

Q. Did she visit them?

A. Yes sir, occasionally.

Q. Down to what time did she continue to visit them?

A. She was only there a few times after the firm was organized.

Q. I asked you down to what time?

A. I couldn't state positively; but I don't think she was ever in the place after the first of June, 1904.

Q. When did you first tell anybody about the conversation that you say took place with Mr. Holmes with reference to giving signals by the movement of the window shade?

A. I think I first told it to you on cross examination.

Q. You had never mentioned that to anybody until that time?

A. I don't think I ever did. I don't recall that I ever did

218 Q. I think you said, and I want you to correct me if I am wrong, that in the latter part of December Mr. Holmes was sick at the Breslin Hotel in New York, and was in bed?

A. Yes, sir.

Q. You paid certain money in cash, I think you said, to either Mr. Peckham or Mr. Haas; which was it?

A. I think it was to Mr. Haas. Yes sir, it was to Mr. Haas, because Mr. Peckham brought up some small bills, and I took up $10,000. Mr. Peckham brought up $1200 and we made the change in that way, and gave the money to Mr. Haas. Mr. Peckham then charged himself with the small item, to make the money even and Haas was handed $10,800, which he gave to Mr. Holmes.

Q. Then Mr. Holmes put it under his pillow?

A. Yes sir.

Q. Then Mr. Holmes said in substance, "Freddie, we must draw down our share of that $75,000?"

A. Yes sir.

Q. And still you do not think you were doing anything wrong?

Mr. BEACH: If your Honor please, that question has been asked a score of times.

Mr. WORTHINGTON: I think it is exceedingly pertinent. What could be more important for the jury to know, in passing upon the credibility of this witness, than to know whether it is true or not that he did not know that he was doing anything wrong, or did not think he was doing anything wrong?

The COURT: You may ask him that.

Q. You understood that Mr. Holmes was getting that as his reward for giving out information from the Bureau of Statistics?

A. I was not told that at all.

Q. Did you understand that?

A. No sir; I didn't know but what Mr. Holmes might have loaned Mr. Haas the money.

Q. And when he said, "Freddie, we must draw down our share of the $75,000" you thought he might be asking for the payment of a debt?

A. I didn't know what he owed. I only knew Mr. Haas in the matter. I didn't owe Mr. Holmes any of that $75,000.

Q. And you did not, in your own mind, understand that he was receiving that money for betraying his trust down here?

A. No sir; I didn't know anything about it.

Q. You said that the firm of Peckham, Mercer & Company was formed so that you could conveniently carry out these operations that you had arranged to go into with Haas, Peckham and Mr Holmes?

A. That was one of the reasons, and the other reason was to benefit by the commissions which were a substantial item on large transactions.

Q. You understood that, as the papers were originally drawn, Mr. Holmes was to have a share in the profits?

219 A. I didn't know anything about that, except that I saw Mr Haas give Mr. Holmes this trust agreement.

Q. You saw Haas give Mr Holmes the agreement which you read, did you not?

A. I had read it; yes sir.

Q. You witnessed it yourself, did you not?

A. Yes sir, but there was not anything said about what it was for.

Q. Didn't you read it or hear it read?

A. Yes sir.

Q. And didn't you know that it declared that Mr. Holmes was entitled to one half of Mr. Haas' profits in the concern?

A. Not at the time I witnessed it. His name was not in it. Holmes wrote his name in after Haas handed me the paper, and after it was witnessed.

Q. He wrote it in in your presence?

A. Yes sir.

Q. So that you knew the agreement was that Holmes was to get a share of the profits?

A. Yes sir.

Q. What was your understanding that he was to get a share of the profits for?

A. I didn't know but what he had put up money with Haas.

Q. So far as you knew that was an honest transaction?

A. It certainly was an honest transaction all the way through.

Q. Where were these papers drawn up, who had them prepared and typewritten?

A. I don't recall, but I think Mr. Peckham brought them up.

Q. Was it not done in your office and under your direction?

A. I don't remember but I think not.

Q. I show you now exhibit No. 35-D, which is one of the memoranda you have identified. I think you said that "December 30th" and "Col." were not written at the same time as the rest of the paper?

A. No sir.

Q. When were those entries put on there?

A. I don't think they were put on until the next June.

Q. You mean about the time you came down here to see the Secretary?

A. Yes sir.

Q. You put on there "Col."

A. Yes sir.

Q. What does "Col." mean?

A. The amount that Haas paid Holmes. I put it on there just for a memorandum of my own.

Q. It indicated that that was the Colonel's share?

A. That is what I saw Haas pay Holmes on December 5.

220 Redirect examination.

By Mr. BEACH:

Q. Just a question or two, Mr. Van Riper, on one or two points that my friend Mr. Worthington has brought out. On page 212, in volume 2[illegible], Mr. Worthington asked you this:

"Q. Who was it, told you then that Mr. Holmes had arranged that if he did not get Mr. Hyde to do what he wanted to, as I understand, that he would do something with the window blind to indicate?"

You answered:

"A. I heard Mr. Holmes make the plan to Mr. Peckha- and saw him draw a diagram showing the position of the curtain in his own handwriting—what the different positions of the curtain meant."

That was the question and that was your answer. I will ask you to tell us what use was to be made of the curtain, and what the positions were?

A. If the curtain was half way down, that is at the parting of the two shades, it meant that the report was as he expected. If it was half way up on the upper sash, it meant that something had gone wrong and to get out. If it was half way down on the lower sash, it meant that it was even better than he had planned.

Q. At page 1211, Mr. Worthington asks you:

"Q. Have you ever noticed a similarity between you- handwriting and that of Mr. Holmes."

Your answer was:

"A. No sir."

At page 1159, Mr. Worthington, in asking you about this receipt, asked this question:

"You say that this is Mr. Holmes' handwriting and his signature?"

To which you answered:

"Yes sir."

Mr. WORTHINGTON: I remember that very well Mr. Beach.

A. I did not understand the question that way, Mr. Beach. I understood him to ask me if it was Mr. Holmes' signature.

By Mr. BEACH:

Q. I did not either; until I saw it in the record.

A. I answered that before I looked at this; but I remember that the body was in handwriting, and Mr. Holmes signed it.

Q. Did Mr. Holmes say where he got the $15,000.?

A. Yes sir.

Q. I mean where he got it?

A. Yes sir.

Q. Where?

A. From Mr. Haas through Price, or rather from Price through Haas.

221 Recross-examination.

By Mr. WORTHINGTON:

Q. Have you had your attention called to this matter of the handwriting of the receipt of September 23rd, 1904 since you left the stand on yesterday?

A. No sir, not except what you heard here.

Q. You say your attention was not called to it until just now?

A. No sir.

Q. You did not know, until now, that you were reported to have said that the Holmes paper was in Mr. Holmes' handwriting?

A. I misunderstood the question, if I answered it in that way. I understood you to ask me if that was Mr. Holmes' signature.

Q. That does not answer the question I asked?

A. No; I never have had my attention called to it except what you heard right here.

Q. You did not know then, until now, that you are reported to have said that the whole paper was in his handwriting?

A. No sir.

Mr. BEACH: If your Honor please, we will offer this receipt in evidence.

The COURT: I think it was read.

Mr. BEACH: I want to have it marked as an exhibit and filed.

Said receipt is marked Exhibit 246, and is in the words and figures, following, to wit:

"The New Willard," Pennsylvania Avenue, Fourteenth and F Streets.

F. S. Hight, Manager.

WASHINGTON, D. C., *Sept.* 23, 1904.

Received of L. C. Van Riper, 50,000.*00* shares of Thunder Mountain Gold and Silver Mining and Milling Co. together with note for $15,000 due six months after date, said stock to be held as collateral and to be returned on payment of note.

"E. D. HOLMES, JR."

222 United States Circuit Court, Southern District of New York.

In the Matter of the Application of FREDERICK A. PECKHAM for a Writ of Habeas Corpus.

Return to Writ of Habeas Corpus.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

William Henkel being duly sworn, says:

That he is United States Marshal for the Southern District of New York;

That upon the 2nd day of December, 1908, the foregoing writ of habeas corpus was served upon him, directing him to have the body of one, Frederick A. Peckham, by him imprisoned and detained at a stated term of the Circuit Court of the United States in the Southern District of New York, on the 4th day of December, 1908
223 at eleven o'clock a. m., together with the time and cause of such imprisonment and detention, and together with said writ of habeas corpus.

Deponent further certifies and says:

That said Frederick A. Peckham was at the time said writ was served upon him, in his custody under and by virtue of a warrant

of commitment dated the 2nd day of December, 1908, signed by John A. Shields, Esq., United States Commissioner in and for the Southern District of New York, which said commitment, among other things, commanded this deponent as aforesaid, in the name and by the authority of the United States of America, to take the said defendant into his custody and him safely keep until he should be ordered by the District Judge to be removed to the District of Columbia for trial or shall be discharged according to law;

That by virtue of the said commitment, this deponent took the said Frederick A. Peckham into his custody upon the said 2nd day of December, 1908;

That upon said writ of habeas corpus so certified was endorsed an order of the Honorable George C. Holt, District Judge, directing the deponent to release the said Frederick A. Peckham in the custody of his counsel to give bail during the pendency of such writ. Upon the service of said writ and the said order endorsed thereupon the deponent delivered said defendant into the custody of his counsel as directed by said order.

224

Deponent refers to the original warrant of commitment and the endorsement thereon, now in his possession which he hereby makes a part of this return, a copy of which is hereto annexed and marked Exhibit "A."

WILLIAM HENKEL,
U. S. Marshal.

Sworn to before me this 4th day of December, 1908.

JOHN A. SHIELDS,
[SEAL.] *U. S. Commissioner.*

(Endorsed:) U. S. Circuit Court, Southern District of New York.—Frederick A. Peckham, vs. William Henkel.—Writ of Habeas Corpus and return.—Henry L. Stimson, United States Attorney, Attorney for Def't.—U. S. Circuit Court, Southern District N. Y., Filed Jan. 7, 1909. John A. Shields, Clerk.

225

Annexed to the Marshal's Return are copies of the following papers, viz:

Exhibit A, Commitment.
Warrant November 30, 1908.
Affidavit of G. H. Dorr, Nov. 30, 1908.
Exhibit A, Washington indictment No. 26,086.
Exhibit B, Washington Indictment No. 26,087.

All of which are printed in full in the return to the Writ of Certiorari.

226 In the Circuit Court of the United States for the Southern District of New York.

FREDERICK A. PECKHAM, Petitioner,

vs.

WILLIAM HENKEL, United States Marshal in and for the Southern District of New York, and John A. Shields, United States Commissioner for the Southern District of New York, Respondents.

The defendant Frederick A. Peckham for traverse and answer to the return of William Henkel, United States Marshal in and for the Southern District of New York to the writ of habeas corpus issued to him in the above entitled matter doth hereby allege as follows:

First. Said commitment under and by virtue of which said Marshal returns that he is holding, restraining and depriving petitioner of his liberty is illegal and void for the following reasons:

227 (1). Said Commissioner who issued said warrant to said Marshal was without jurisdiction to commit the defendant for removal to the District of Columbia for the reason that said defendant was under indictment in the Southern District of New York for precisely the same offenses charged against him by certain indictments found in the District of Columbia. Said defendant had been apprehended upon said New York indictments and admitted to bail; had demurred to the sufficiency of the indictments and said demurrers had been overruled. He was therefore legally in custody in the Southern District of New York, awaiting trial for precisely the same offenses for which removal is now sought to the District of Columbia.

(2). The alleged crimes set forth in the certain indictments so found in the District of Columbia were and are barred by the Statute of Limitations.

(3). The said indictments do not charge the defendant with the commission of a statutory crime or offense and there was, therefore, an entire absence of probable cause before the Commissioner.

Second. The said indictments relating to Section 5451 of the Revised Statutes of the United States do not sufficiently charge a violation of that Section.

228 Third. The alleged crime of conspiracy to bribe attempted to be set forth in the indictments resulting in said warrant upon which defendant is held merge in the completed offense.

Fourth. The proceedings before said Commissioner resulting in the issuance of said warrant did not confer jurisdiction upon said Commissioner to commit the defendant for removal for the additional reason that the complaints upon which proceedings were instituted before said Commissioner were all upon information and belief and not upon the positive knowledge of affiant.

Fifth. The defendant is deprived of his liberty without due process of law and contrary to the provisions of the Constitution of the United States; said Commissioner was wholly without jurisdiction to issue said warrants, and said Marshal is acting under illegal war-

rants in attempting to hold and detain said defendant and deprive him of his liberty as aforesaid.

Sixth. Said Commissioner who issued the warrants upon which defendant is held was also without jurisdiction to commit said defendant for removal to the District of Columbia for the ad-
229 ditional reason that an order for the removal of said defendant to the District of Columbia had been granted by United States Judge Ray from which order the defendant had appealed and Judge Ray had granted his stay of execution of said order until the determination of said appeal. In the meantime said defendant had been enlarged on bail and was therefore legally in custody for removal to the District of Columbia at the time of the institution of the proceedings resulting in the warrant issued by Commissioner Shields.

Wherefore, the defendant Frederick A. Peckham demands that he be discharged in accordance with the prayer of his petition presented to the United States Circuit Court for the Southern District of New York for writs of habeas corpus and certiorari herein.

FREDERICK A. PECKHAM, *Defendant.*

230 County of New York, *ss:*

Frederick A. Peckham, being duly sworn, says that he is the defendant above named; that he has read the foregoing traverse and answer to the return of the Marshal herein, and that the same is true as he verily believes.

FREDERICK A. PECKHAM.

Subscribed and sworn to before me, this 4th day of December, A. D. 1908.

JOHN A. SHIELDS,
[SEAL.] *U. S. Commissioner.*

231 Endorsed: United States Circuit Court, Southern District of New York. Frederick A. Peckham, Petitioner, vs. William Henkel, United States Marshal in and for the Southern District of New York, and John A. Shields, United States Commissioner for the Southern District of New York Respondents. Traverse and answer to return of marshal. Nash Rockwood, 378 Broadway, Saratoga Springs, N. Y.—Max D. Steuer, 115 Broadway, New York City, Attorneys for Petitioner. U. S. Circuit Court, Southern District of N. Y. Filed Dec. 4, 1908. John A. Shields, Clerk.

232 The President of the United States of America to John A. Shields, United States Commissioner, in and for the Southern District of New York, Greeting:

We command you that you certify fully and at large to the United States Circuit Court in and for the Southern District of New York to be held in the Post Office Building in the City of New York, County of New York and State of New York, on the 4th day of December, 1908, at 11 o'clock, in the forenoon of that day, the cause of the imprisonment of Frederick A. Peckham, by you detained,

as it is said, by whatsoever name the said Frederick A. Peckham shall be called or charged; and that you certify fully and at large the cause of the imprisonment of the said Frederick A. Peckham and true copies of the proceedings, complaint, warrant, depositions, examinations, determinations, documentary evidence, commitments and record had before you in the matter of the United States against Frederick A. Peckham upon a charge of the violation of the laws of the United States, and have you then and there this Writ.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States of America, the 2nd day of December, 1908.

[SEAL.] JOHN A. SHIELDS, *Clerk.*

233 Allowed this 2nd day of December, 1908.

GEO. C. HOLT, *J.*

NASH ROCKWOOD,
378 *Broadway, Saratoga Springs, N. Y.*
MAX D. STEUER,
115 *Broadway, New York City,*
Attorneys for Petitioner, Frederick A. Peckham.

234 UNITED STATES
vs.
FREDERICK A. PECKHAM.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John A. Shields, United States Commissioner for the Southern District of New York, in obedience to the foregoing writ of Certiorari do hereby certify, that the papers hereunto annexed and returned herewith constitute the record and proceedings had before me in the above entitled cause.

Dated New York, December 2nd, 1908.

JOHN A. SHIELDS,
U. S. Commissioner.

235 *Commitment.*

The accused Frederick A. Peckham named in the annexed warrant having been arrested and brought before me on the said warrant, and the charges on the warrant and complaint contained having been duly explained to the said accused, and he being duly cautioned and informed of his rights in the matter, having said that he demanded an examination and said examination having been had and it appearing to me from the testimony submitted that there is probable cause to believe the said Frederick A. Peckham guilty of the offense charged in the annexed warrant and complaint contained, he is hereby committed for trial at the District of Columbia, being the District in which the offense charged is alleged to have been committed. And the said Frederick A. Peckham is hereby committed

to the custody of the United States Marshal for the Southern District of New York until a warrant for his removal shall issue by the U. S. District Judge or he shall be otherwise dealt with according to law. New York, December 2nd, 1908.

(Signed) JOHN A. SHIELDS,
[L. S.] *U. S. Commissioner.*

To Wm. Henkel, U. S. Marshal.

236 (Endorsement:) U. S. Circuit Court, Southern District of New York. The United States versus Frederick A. Peckham. Complaint for Removal. Henry L. Stimson, United States Attorney, Attorney for U. S. The within named accused Fred. A. Peckham being arrested and brought before me on the within warrant and the charge herein contained being duly explained to said accused and he being duly cautioned and informed of his rights in the matter says that he demands an examination and the said accused Fred'k A. Peckham is hereby committed to the custody of the U. S. Marshal, for the Southern District of New York to be brought before me for examination on the 30 day of Nov. 1908 at 3 o'clock P. M. New York, Nov. 30, 1908. John A. Shields, U. S. Commissioner, S. D. of N. Y. To William Henkel, Esq., U. S. Marshal.

237 The President of the United States of America to the Marshal of the United States for the Southern District of New York and to his deputies or any or either of them:

Whereas, complaint on oath in writing hath been made to me charging that Frederick A. Peckham did, at the District of Columbia, and on divers days in said complaint mentioned, conspire with divers persons in said complaint mentioned, to defraud the United States and to commit an offense against the United States in manner and form as is set forth in said complaint and exhibits thereto attached and made a part thereof, a copy of which complaint and exhibits is hereto attached and made a part hereof; against the peace of the United States and their dignity and against the form of the Statute of the United States in such case made and provided; and it being satisfactorily proven to me that the said Frederick A. Peckham is now within the Southern District of New York,

Now, therefore, you are hereby commanded, in the name of the President of the United States of America, to apprehend the said Frederick A. Peckham and bring his body forthwith before me, or some Judge or Justice of the United States, wherever in the State of New York he may be found, that he may then and there be dealt with according to law for the said offense.

238 Given under my hand and seal this 30th day of November in the year of our Lord one thousand nine hundred and eight.

(Sgd.) JOHN A. SHIELDS,
United States Commissioner for the Southern District of New York.

HENRY L. STIMSON,
United States Attorney.

239 Before John A. Shields, Esq., United States Commissioner, Southern District of New York.

THE UNITED STATES
v.
FREDERICK A. PECKHAM.

R. S., Sec. 1014 and 5440.

SOUTHERN DISTRICT OF NEW YORK, *ss*:

Goldthwaite H. Dorr, being first duly sworn, deposes and says: That he is Assistant United States Attorney for the Southern District of New York;

That on the 29th day of May, A. D., 1908, there were returned into the Supreme Court of the District of Columbia by the grand jury of that Court, two certain indictments against Frederick A. Peckham, charging him with violating Section 5440 of the Revised Statutes of the United States as amended; that one of said indictments was numbered 26086 and a copy of a duly certified copy thereof is hereto annexed, marked Exhibit A and made part hereof; that the other of said indictments was numbered 26087 and a copy of a duly certified copy thereof is hereto annexed, marked Exhibit B and made part hereof.

240 *First Count.*

On information and belief deponent says that heretofore, to wit, on May 31st, 1905, and at the District of Columbia and under the circumstances and conditions set forth and averred in said Exhibit A, the said Frederick A. Peckham unlawfully did conspire with one Edwin S. Holmes, Jr., one Moses Haas and one Lewis C. Van Riper to defraud the United States of and concerning its governmental function in the matter of issuing and publishing the cotton-crop report to be issued and published by the Department of Agriculture, Bureau of Statistics, in the next succeeding month of June, and of its right to administer an intelligent and honest service in that connection in the interests of the people of the United States, to be accomplished by the means and methods and under the circumstances and conditions in said Exhibit A set forth and described; and that in pursuance of said conspiracy and to effect its object, said Moses Haas at the places and at the times in said Exhibit A set forth, did do and perform the several acts averred in said Exhibit A to have been done in pursuance of said conspiracy.

Second Count.

On information and belief deponent further says that heretofore, to wit, on May 31st, 1905, and at the District of Columbia
241 and under the circumstances and conditions set forth in said Exhibit B, the said Frederick A. Peckham unlawfully did

conspire with said Moses Haas and said Lewis C. Van Riper to commit an offense against the United States, that is to say: the offense of promising, offering and giving to an officer of the United States and a person acting for and on behalf of the United States in an official function under and by virtue of a certain department and office of the Government thereof, that is to say, to the said Edwin S. Holmes, Jr., Associate Statistician of the said Bureau of Statistics, a sum of money, the amount of which is to deponent unknown, to induce the said Holmes to do certain acts in violation of his lawful duty, that is to say, to induce the said Holmes unlawfully to do and perform the several acts as averred and set forth in said Exhibit B; and that in pursuance of said last mentioned conspiracy and to effect its object, the said Haas at the times and at the places in said Exhibit B set forth did do the several acts averred and alleged in said Exhibit B to have been done in pursuance of said last mentioned conspiracy; against the peace of the United States and their dignity, and contrary to the form of the statute of the same in such case made and provided.

Deponent is informed and believes that the said Frederick A. Peckham is now within the Southern District of New York.

242 The sources of deponent's information and the grounds of his belief as to matters herein stated to be alleged on information and belief are authenticated copies of the indictments mentioned herein and official investigations and communications as to matters herein alleged.

GOLDTHWAITE H. DORR.

Subscribed and sworn to before me this 30th day of November, 1908.

JOHN A. SHIELDS,
U. S. Com.

243 EXHIBIT A.

Authentication.

Supreme Court of the District of Columbia.

I, John R. Young, Clerk of the said Court, do hereby certify that the following copy of indictment, annexed to this certificate, is a true copy of the original on file and of record in said office, and that said original indictment is pending in said Court.

Witness my hand and the seal of said Court, this 2nd day of June, 1908.

[Seal Supreme Court of the District of Columbia.]

J. R. YOUNG, *Clerk.*
By S. McC. HAWKEN,
Ass't Clerk.

I, Harry M. Clabaugh, Chief Justice of said Court, do certify the foregoing attestation by John R. Young, Clerk of the said Court, to be in due form.

Witness my hand and seal this 2d day of June, 1908.

HARRY M. CLABAUGH. [SEAL.]
Chief Justice.

I, John R. Young, Clerk of said Court, hereby certify that the Honorable Harry M. Clabaugh, whose genuine signature is subscribed to the foregoing certificate, was, at the time of signing and attesting the same, Chief Justice of said Court, duly commissioned and qualified.

244 Witness my hand and the seal of said Court, this 2d day of June, 1908.

[Seal Supreme Court of the District of Columbia.]

J. R. YOUNG, *Clerk.*
By S. McC. HAWKEN,
Ass't Clerk.

245 Filed in Open Court May 29, 1908. J. R. Young, Clerk.

In the Supreme Court of the District of Columbia, Holding a Criminal Term, April Term, A. D. 1908.

DISTRICT OF COLUMBIA, *ss:*

The grand jurors of the United States of America, in and for the District of Columbia aforesaid, upon their oath, do present:

That before and during the three years last past the United States, through the Department of Agriculture and a certain bureau of that department, to wit, the Bureau of Statistics, has exercised the governmental function of acquiring and diffusing among the people of the United States useful information on subjects connected with agriculture, including the subject of cotton; that in acquiring such information pertaining to cotton the United States, through the said Department and bureau, has made use of divers agencies, to wit, among others correspondence with cotton planters and dealers in and ginners of cotton, through employees and agents of the said department and bureau located in the several States where cotton is grown, and through special investigations in the field of employees and agents of the said department and bureau; and that in diffusing the said information pertaining to cotton the United States has issued, on or near the third day of each of the months of June, July, August, September, October and December in each year crop reports em-

246 bracing statements, based upon the information so acquired, of the conditions of the cotton crop, by States, in the United States, with such explanations, comparisons, and information as might be useful for illustrating that matter,—which said cotton crop reports have been by law required to be submitted to and officially approved by the Secretary of Agriculture before so being issued or

published; and that under the practice, custom and regulation of the said department established and sanctioned by the said Secretary of Agriculture, no officer or employee thereof to whom such information might come by reason of his office or employment has been permitted to issue, publish or divulge to unauthorized persons, and all such officers and employees have been prohibited from issuing, publishing or divulging to unauthorized persons, any such information so acquired as aforesaid, or any such cotton crop report, or any information indicating the probable contents or character of the same, in advance of its official issuance and publication, or without its first being submitted to and officially approved by the said Secretary.

And the grand jurors aforesaid, upon their oath aforesaid, do further present that Moses Haas, Edwin S. Holmes, junior, and Frederick A. Peckham, each late of the District of Columbia, on the thirty-first day of May, in the year of our Lord one thousand nine hundred and five, at and within the said District of Columbia unlawfully did knowingly conspire, combine, confederate and
247 agree together, and with one Lewis C. Van Riper, who is not made a defendant herein, to defraud the United States of and concerning its governmental function in the matter of issuing and publishing the cotton-crop report to be issued and published by the said department and bureau in the then next succeeding month of June, and of its right to administer an intelligent and honest service in that behalf in the interests of the people of the United States, to be accomplished by the means and methods and under the circumstances and conditions now here set forth and described; that is to say:

The said Edwin S. Holmes, junior, before and on the day last aforesaid, was an officer and employee of the said department and bureau, to wit, associate statistician thereof and a portion of the information upon which the said cotton-crop report was to be based, and which had been acquired by the said department and bureau in the manner aforesaid, and indicated the probable contents and character of the said report, had come and was known to the said Edwin S. Holmes, junior, in his capacity as such officer and employee; and thereafter, and before the time of the official issuance and publication of the said report, other like information would come to and be known to the said Edwin S. Holmes, junior, in his said capacity.

The said Frederick A. Peckham, Moses Haas and Lewis C. Van Riper, who then and there were neither officers nor employees
248 either of the said department or of the said bureau, and who then and there were persons not in any manner authorized to have or know the information last aforesaid, or to be informed as to the probable contents or character of the said crop report in advance of its said official issuance and publication, or without such report first being submitted to and officially approved by the said Secretary, and who well knew all the premises in this indictment above set forth, were thereafter, and in advance of the said official issuance and publication of the said cotton-crop report, to obtain and receive from the said Edwin S. Holmes, junior, and the said Edwin S. Holmes,

junior, also then well knowing the said premises, was to give and divulge to them the said Frederick A. Peckham, Moses Haas and Lewis C. Van Riper information which as aforesaid had and would come and be known to him the said Edwin S. Holmes, junior, in his said capacity as an officer and employee of the said department and bureau, and this without the said cotton-crop report being first submitted to and officially approved by the said Secretary of Agriculture; it being the design and intention of the said Frederick A. Peckham, Moses Haas, Edwin S. Holmes, junior, and Lewis C. Van Riper in so doing to make use of the said information, before the lawful issuance and publication of the said report, for their pecuniary benefit, in speculating in cotton, in view of the probable effect upon the market price of that commodity which the subsequent
249 lawful issuance and publication of the said cotton crop report would have, and in other ways to the said grand jurors unknown.

Overt Acts.

1. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said Moses Haas, at the District of Columbia, on the said thirty-first day of May in the year of our Lord one thousand nine hundred and five, unlawfully did promise and offer to give to the said Edwin S. Holmes, junior, a certain share of whatever moneys, they, the said Moses Haas and Frederick A. Peckham and the said Lewis C. Van Riper, or either of them should acquire through speculations in cotton based upon information to be furnished by the said Edwin S. Holmes, junior, to them, which information has been or should be acquired by the said Edwin S. Holmes, junior, in his official capacity as to the probable contents of the cotton-crop report to be issued in the month of June then next ensuing.

2. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that further in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said Moses Haas unlawfully did meet and confer with the said Lewis C. Van Riper at the City of New
250 York, in the Southern District of New York, on the said thirty-first day of May, in the year of our Lord nineteen hundred and five.

3. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that further in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said Moses Haas, afterwards, to wit, on the first day of June, in the year of our Lord nineteen hundred and five, unlawfully did journey from the said City of New York in said Southern District of New York to the said City of Washington, said District of Columbia.

4. And the grand jurors aforesaid, upon their oath aforesaid, do

further present, that further in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said Moses Haas, afterwards, to wit, on the said first day of June, in the year nineteen hundred and five, unlawfully did obtain from the said Edwin S. Holmes, junior, at said District of Columbia, certain information which was to be contained in said cotton-crop report to be issued in said month of June, nineteen hundred and five, and which had been acquired by the said Edwin S. Holmes, junior, in the performance of his duties as such associate statistician.

5. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that further in pursuance of the said unlaw-
251 ful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said Moses Haas at the said City and Southern District of New York on the said second day of June, in the year nineteen hundred and five unlawfully did communicate the said information so obtained as last aforesaid by him from the said Edwin S. Holmes, junior, to the said Lewis C. Van Riper.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said Moses Haas and the said Edwin S. Holmes, junior, and the said Frederick A. Peckham, at the time and place and in the manner and form aforesaid, unlawfully did conspire together and with others, to defraud the United States, and did each do acts to effect the object of the said conspiracy; against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

DANIEL W. BAKER,
Attorney of the United States in and for the District of Columbia.

252 (Endorsed:) No. 26086. United States vs. Edwin S. Holmes, junior, Frederick A. Peckham, and Moses Haas. Conspiracy to Defraud the United States. Witnesses: Andrew Parker, Sam'l Baulsir, Wm. L. Lanning, Nathaniel Murray, Louis C. Van Riper, Herbert H. Smith, Richard A. Springs, Victor Arnostead, Russell R. Coats, Walter Mayer. A true bill. E. J. Waldo, Foreman. Filed in open court, May 29 1908. J. R. Young, Clerk.

253 EXHIBIT B.

Authentication.

Supreme Court of the District of Columbia.

I, John R. Young, Clerk of the said Court, do hereby certify that the following copy of indictment annexed to this certificate, is a true copy of the original on file and of record in said office, and that said original indictment is pending in said Court.

Witness my hand and the seal of said Court, this 1st day of June, 1908.

[Seal Supreme Court of the District of Columbia.]

J. R. YOUNG, *Clerk*.
By S. McC. HAWKEN,
Ass't Clerk.

I, Harry M. Clabaugh, Chief Justice of said Court, do certify the foregoing attestation by John R. Young, Clerk of the said Court, to be in due form.

Witness my hand and seal this 1st day of June, 1908.

HARRY M. CLABAUGH. [SEAL.]
Chief Justice.

I, John R. Young, Clerk of said Court, hereby certify that the Honorable Harry M. Clabaugh, whose genuine signature is subscribed to the foregoing certificate, was, at the time of signing and attesting the same, Chief Justice of said Court, duly commissioned and qualified.

Witness my hand and the seal of said Court, this 1st day of June 1908.

[Seal Supreme Court of the District of Columbia.]

J. R. YOUNG, *Clerk*.

254 Filed in Open Court May 29, 1908. J. R. Young, Clerk.

In the Supreme Court of the District of Columbia, Holding a Criminal Term, April Term, A. D. 1908.

DISTRICT OF COLUMBIA, *ss:*

The grand jurors of the United States of America, in and for the District of Columbia aforesaid, upon their oath, do present:

That in the administrative arrangement of the business of the Department of Agriculture of the said United States, on and before the thirty-first day of May, in the year nineteen hundred and five, there was, and from thence hitherto there has been a bureau designated and known as the Bureau of Statistics; and that during the time and times aforesaid the said bureau was under the management of an officer and employee of the said United States and of the said Department of Agriculture designated and known as statistician and as chief of the Bureau of Statistics; and that during the time and times aforesaid there were in the said bureau other officers and employees of the said United States and of the said Department of Agriculture, one of whom was designated and known as associate statistician and another of whom was designated and known as assistant statistician and as assistant chief of the Bureau of Statistics; and that during the time and times aforesaid whenever the said

statistician was absent from his said office, the said bureau
255 was under the management of the said associate statistician, who acted in the place and stead of said statistician as chief of said bureau.

And that during the time and times aforesaid the said statistician with the aid and assistance of the said associate statistician and of the other officers and employees of the United States employed in said Bureau, and in the absence of the said statistician, the said associate statistician with the aid and assistance of the other officers and employees aforesaid of said bureau, was charged with the duty of preparing during certain months in each year certain reports upon the conditions of certain of the crops grown and raised in the United States, which reports became known as and were called crop reports, and that each of said crop reports was by law required to embrace statements of the conditions of the crops therein mentioned by States of the said United States, with such explanations, comparisons and information as might be useful for illustrating the matter contained in said reports, and that each of such reports was required by law to be submitted to and officially approved by the Secretary of Agriculture before being issued or published.

That each of said reports was prepared by the said statistician or the said associate statistician in the manner aforesaid, from certain information collected by the said bureau from divers sources
256 approved by the said bureau; amongst others being certain correspondents of the said Bureau of Statistics residing in those parts of the United State where were grown the particular crops upon which they furnished information, and who were persons having special knowledge upon the subject, and certain employees of the said bureau, known as Statistical Agents, and certain other expert employees of the said Bureau, whose duty it was to travel throughout the United States and ascertain the conditions of the said crops.

And that during the time and times aforesaid whenever the said statistician or the said associate statistician had as aforesaid prepared any of said reports, he, the said statistician, or the said associate statistician, as the case might be, in accordance with the requirement of the law aforesaid submitted the said report so prepared to the Secretary of Agriculture for the latter's official approval; and that whenever any of said reports was so submitted *by* said Secretary of Agriculture for his official approval, he, the said Secretary of Agriculture, in the usual course of business in his said department, and relying upon the proper performance of his duty in the preparation of said report by the said statistician or by the said associate statistician, as the case might be, officially approved the same; and that after such official approval by the said Secretary of Agriculture thereof, and not until then such approval was given each
257 of said reports was issued and published by the said Department of Agriculture.

And that during the time and times aforesaid, the said crop reports were prepared, approved, and issued and published for the purpose of diffusing the information therein contained among the people of the United States, and that said crop reports were prepared

at great expense to the said United States and were to be fair, impartial, correct and accurate; and the said crop reports and each of them upon their issuance and publication after being submitted to and officially approved by the Secretary of Agriculture as aforesaid, did affect to a greater or less extent the market price of the several crops mentioned therein.

That during the time and times aforesaid a custom and practice prevailed in the said Department of Agriculture, established and sanctioned by the said Secretary, under which the giving out to the public of any information collected by the said Bureau of Statistics or its said officers or its said employees, to be used in the preparation of or to be contained in any of said crop reports, was prohibited, and the keeping of such information secret was required, except such information as was contained in said crop reports when and after the same had been officially issued and published. And that during the time and times aforesaid it was the duty of the
258 said statistician and of the said associate statistician and said other officials and employees aforesaid of the said Bureau of Statistics to prepare a true and accurate report upon each of the said crops, from the information as to said crops obtained as aforesaid, and without regard to the influence which any such report might have upon the market price of the crop therein mentioned.

And that during the time and times aforesaid the said statistician and the said associate statistician and the other officers and employees aforesaid of the said Bureau of Statistics were charged with the duty of honestly and carefully guarding and keeping secret and of not divulging to any person not employed in or connected with said Bureau of Statistics any information acquired by him or them in the course of preparing and assisting in preparing the said crop reports and in collecting statistics and compiling statistical matter for use in the preparation of said crop reports, or any of the matters and things and other information which might be contained in any of said crop reports, until said crop reports had been prepared, officially approved, and issued and published as aforesaid, and thereafter said duty of so maintaining secrecy as aforesaid continued save and except as to the matters and things so officially made public in said reports.

And that among the said crop reports so prepared by the said statistician with the aid and assistance of said associate
259 statistician and said other officers and employees of the said Bureau of Statistics, and, in the absence of said statistician, so prepared by the said associate statistician with the aid and assistance of said other officers and employees of the said Bureau of Statistics as aforesaid, and so submitted to and officially approved by the said Secretary of Agriculture as aforesaid, was a report upon the cotton crop of the United States, which became known as and was called the cotton crop report, and which said cotton crop report during the time and times aforesaid was issued and published on or about the third day of each of the months of June, July, August, September, October and December in each year.

That on the sixteenth day of November, in the year nineteen

hundred and three, and thence continuously until the ninth day of June, in the year nineteen hundred and five, one Edwin S. Holmes, junior, held and occupied the office of, and was, such associate statistician in the said Bureau of Statistics in the Department of Agriculture, and as such was an officer of the United States and a person acting for and on behalf of the United States in an official function under and by authority of the said Department and Bureau, and as such associate statistician the said Edwin S. Holmes, junior, was during the period last aforesaid charged with the duty of aiding and assisting the said statistician in the preparation of said
250 crop reports, including said cotton-crop report, and, in the absence of the said statistician from his office, the said Edwin S. Holmes, junior, as such associate statistician, was during the period last aforesaid charged with the duty of preparing with the aid and assistance of said other officers and employees of said Bureau as aforesaid, all of the said crop reports, including the said cotton-crop reports as aforesaid, and that during the period last aforesaid, in the performance of his duties as said associate statistician in assisting the said statistician in the preparation of said crop reports, including said cotton-crop reports, and, in the absence of the said statistician, in the performance of his duties in preparing said crop reports, including the said cotton-crop reports, he, the said Edwin S. Holmes, junior, did, before the official approval and issuance and publication of each of said crop reports, including the said cotton-crop reports, acquire and have knowledge of the statistics and statistical matter from which said crop reports, including said cotton-crop reports, were prepared, and of the matters and things and other information which were to be contained in each of said crop reports, including said cotton-crop reports.

And that during the period last aforesaid, it was the duty of said Edwin S. Holmes, junior, as such associate statistician, whenever he prepared or assisted in preparing any of said reports, to pre-
261 pare and assist in preparing a true and accurate report, from the information as to said crops obtained as aforesaid, and without regard to the effect which such reports might have upon the market price of the crop therein mentioned, and honestly and carefully to guard and keep secret and not to divulge to any person not employed in or connected with said Bureau of Statistics any of the said statistics and statistical matter and information from which said crop reports, including said cotton-crop reports, were to be prepared, and of the matters and things and other information which were to be contained in any of said crop reports, including said cotton crop reports, knowledge of which was so, as aforesaid, acquired by him, the said Edwin S. Holmes, junior, as such associate statistician, until the said reports had been prepared, officially approved, and issued and published as aforesaid, and it was the duty of the said Edwin S. Holmes, junior, as such associate statistician, to thereafter honestly and carefully guard and keep secret and not divulge to any person not employed in or connected with said Bureau of Statistics any of the statistics and statistical matter and matters and things and other information last aforesaid, knowledge of which was so, as aforesaid,

acquired by him, except such matters and things and other information as were included in and officially made public in said reports.

262 All and singular of which the premises and several premises aforesaid, in so far as they were then existent, were known to a certain Frederick A. Peckham and to a certain Moses Haas, at the time of the commission by them of the offense hereinafter set forth, and to a certain Lewis C. Van Riper.

That on the thirty-first day of May, in the year nineteen hundred and five, at the District of Columbia aforesaid, said Moses Haas and said Frederick A. Peckham unlawfully did conspire, combine, confederate and agree together with said Lewis C. Van Riper, who is not made a defendant herein, to commit an offense against the United States; that is to say, the offense of promising, offering and giving to an officer of the United States, and a person acting for and on behalf of the United States in an official function under and by virtue of a certain department and office of the government thereof; that is to say, to the said Edwin S. Holmes, junior, associate statistician of the said Bureau of Statistics as aforesaid, a sum of money, the amount *to* which is to the grand jurors aforesaid unknown, to induce him, the said Edwin S. Holmes, junior, to do certain acts in violation of his lawful duty, that is to say, to induce him, the said Edwin S. Holmes, junior, unlawfully and in violation of the said duty of him, the said Edwin S. Holmes, junior, as such associate statistician honestly and carefully to keep secret all statistics and statistical matter and

263 information, knowledge of which was acquired by him as aforesaid, as such associate statistician, and in advance of the official issue and publication of the said cotton crop report, which was to be issued, as hereinbefore set forth, in the month of June next ensuing, and in advance of the time when the matter and information contained in such cotton crop report could lawfully be made public, to furnish, in so far as in him the power lay, to the said Moses Haas and the said Frederick A. Peckham and the said Lewis C. Van Riper, the statistics, matter and information which were to be contained in said report, knowledge of which was, as aforesaid, acquired by said Edwin S. Holmes, junior, in the performance of his duty as such associate statistician.

Overt Acts.

1. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said Moses Haas, at the City of Washington, in the District of Columbia, on the said thirty-first day of May, in the year nineteen hundred and five, unlawfully did promise and offer to give the said Edwin S. Holmes, junior, a certain share, to wit, a sum equal to one-fourth, of whatever moneys they, the said Moses Haas and Frederick A. Peckham and the said Lewis C. Van Riper or

264 either of them should acquire through speculations in cotton based upon information to be furnished by the said Edwin S.

Holmes, junior, to them, which information was to be contained in the cotton crop report to be issued in the month of June then next ensuing.

2. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that further in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said Moses Haas unlawfully did meet and confer with the said Lewis C. Van Riper at the City of New York, in said Southern District of New York, on the said thirty-first day of May, in the year nineteen hundred and five.

3. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that further in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said Moses Haas afterwards, to wit, on the first day of June, in the year nineteen hundred and five, unlawfully did journey from the said city of New York, in the said Southern District of New York, to the said city of Washington, in said District of Columbia.

4. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that further in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to
265 effect the object of the same, the said Moses Haas afterwards, to wit, on the said first day of June, in the year nineteen hundred and five, unlawfully did obtain from the said Edwin S. Holmes, junior, at the said City of Washington, in said District of Columbia, certain information which was to be contained in said cotton crop report to be issued in said month of June, nineteen hundred and five, and which had been acquired by the said Edwin S. Holmes, junior, in the performance of his duties as such associate statistician. And the grand jurors aforesaid, upon their oath aforesaid do further present, that further in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said Moses Haas, at the said City and Southern District of New York, on the said second day of June, in the year nineteen hundred and five, unlawfully did communicate the said information so obtained as last aforesaid by him from the said Edwin S. Holmes, junior, to the said Lewis C. Van Riper.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said Moses Haas and the said Frederick A. Peckham, at the time and place and in the manner and form aforesaid, unlawfully did conspire together, and with others, to commit an offense
266 against the United States, and did each do acts to effect the object of the said conspiracy, against the peace and dignity of the United States, and contrary to the form of the statute of the same in such case made and provided.

DANIEL W. BAKER,
Attorney of the United States in and
for the District of Columbia.

267 (Endorsement:) No. 26087. United States vs. Moses Haas and Frederick A. Peckham. Conspiracy to Commit an Offense against the United States. Witnesses: Andrew Parker, Sam'l

Baulsir, Wm. L. Lamming, Nathaniel Murray, Louis C. Van Riper, Herbert H. Smith, Rich'd A. Springs, Victor Armstead, Russell R. Coats, Walter Mayer. A true bill. E. J. Walsh, Foreman. Filed in open court May 29, 1908. J. R. Young, Clerk.

268 Before John A. Shields, Esquire, United States Commissioner for the Southern District of New York.

Complaint on Removal.

UNITED STATES
vs.
FREDERICK A. PECKHAM.

R. S., Secs. 1014, 5440.

NEW YORK, *November 30th*, 1908.

Appearances.

G. H. Dorr, Esq., for the United States.
Nash Rockwood, Esq., for the defendant.
Max D. Steuer, Esq., for the defendant.

Mr. DORR: The Government withdraws the complaint on removal filed against Frederick A. Peckham on the 24th of June, 1908, and asks that the warrant under same be dismissed.

Motion granted.

Mr. ROCKWOOD: You now produce a new warrant?

269 The COMMISSIONER: Yes.

Mr. ROCKWOOD: We demand an immediate examination.

Mr. DORR: May I ask Judge Rockwood whether he admits Mr. Peckham's identity as the person named in the indictment mentioned in the complaint?

Mr. ROCKWOOD: Yes.

Mr. DORR: I offer in evidence an authenticated copy of an indictment found in the District of Columbia at the April term, 1908, and appearing to have been filed in the Supreme Court of the District of Columbia on May 29th, 1908 and numbered 26086.

Mr. ROCKWOOD: We object to it as incompetent and immaterial. The indictment does not allege an offence or crime against the United States to have been committed by the defendant Peckham, and it is therefore not evidence in this proceeding of probable cause; that it is not authenticated or certified as required by law; that there is no proof before the Commissioner that Harry M. Clabaugh is the Chief Justice of the Supreme Court of the District of Columbia, or that J. R. Young is the clerk of said court aside from the certificates of those parties themselves; that the authentication is not sufficient to make the indictments evidence in this proceeding;

270 that insofar as said indictment attempts to allege the violation of a regulation of the Department of Agriculture as the basis

for a crime or offence that it is insufficient, as no crime can be predicated upon such violation, the defendant being liable to indictment and arrest only for the commission of a statutory crime.

Objection overruled. Exception.

Indictment and authentication marked Exhibit 1 of this date.

Mr. DORR: I offer in evidence authenticated copy of an indictment found in the Supreme Court of the District of Columbia at the April Term, 1908, and filed in court on May 29th, 1908 and numbered 26087.

Mr. ROCKWOOD: We offer the same objection to that indictment.

Objection overruled. Exception.

Marked Exhibit 2 of this date.

Mr. DORR: I offer in evidence authenticated copies of two bench warrants issued from the Supreme Court of the District of Columbia on indictments Nos. 26086 and 26087 respectively, outstanding in said District of Columbia with the Marshal's return endorsed
271 thereon that the defendant Frederick A. Peckham, for whose apprehension they are issued is not to be found.

Mr. ROCKWOOD: We object to both of these bench warrants as incompetent and immaterial and irrelevant and improper, and further for this specific reason: That these bench warrants in question appear to have been issued on the 2nd of November, 1908, and on that date the defendant Peckham had been previously arrested in removal proceedings under the same indictments now offered in evidence by the Government, to-wit, indictment No. 26086 and 26087, and was enlarged on bail and in the custody of his sureties in the Southern District of New York; that the proceeding in which he was arrested was not based upon the bench warrants which are now offered in evidence, but was based solely upon the affidavits of G. H. Dorr, Esq., which affidavits were upon information and belief, being the same proceeding which the Government has just now previously to the institution of this proceeding moved to dismiss. That the bench warrants in question were not issued for the defendant Peckham at the time of the institution of the previous proceedings and are of no force in this proceeding because at the time of their issuance the said Frederick A. Peckham was in the custody of his bondsman
272 as aforesaid and under arrest.

Objection overruled. Exception.

Bench warrants marked Exhibits 3 and 4 of this date.

Mr. DORR: The authentication is received as part of the exhibit?

The COMMISSIONER: Yes.

Mr. DORR: The Government rests.

Mr. ROCKWOOD: We move for the discharge of Frederick A. Peckham, the defendant, for the following reasons: That the Government has failed to make out a case against the defendant Peckham within the purview of the complaint offered by the Assistant District Attorney; second, that the evidence offered by the Government is not sufficient evidence of probable cause to warrant the commitment of the defendant Peckham for removal, and there is an entire absence of probable cause before your Honor. That the indictments fail to allege the commission of a statutory crime or offence, or any

crime or offence, for which the defendant Peckham can be removed for trial to the District of Columbia; that said indictments upon their face are defective and void for duplicity, and in that they fail to set forth a statutory crime or offence against the United States of any nature or character whatsoever.

273 Motion denied. Exception.

Mr. ROCKWOOD: We offer in evidence indictment No. 24866 found in the District of Columbia in August 1905, and being known as the first Washington indictment.

Mr. DORR: I object to that on the ground that it is immaterial, incompetent and irrelevant.

Objection overruled.

Indictment received in evidence.

Mr. ROCKWOOD: We offer in evidence the second Washington indictment, being No. 24867 returned to the court in August 1905.

Same objection and ruling.

Indictment received in evidence.

Mr. ROCKWOOD: We offer in evidence the third Washington indictment, being indictment No. 24907, returned to the Supreme Court of the District of Columbia on October 2nd, 1905.

Same objection and ruling.

Indictment received in evidence.

Mr. ROCKWOOD: We offer in evidence the opinion of United States Commissioner Ridgway discharging the defendant Peckham upon said 1905 indictments and holding the said indictments

274 do not allege a crime.

Mr. DORR: May I ask whether Mr. Peckham was actually before Commissioner Ridgway at that time?

Mr. ROCKWOOD: Yes.

Mr. DORR: And was actually discharged?

Mr. ROCKWOOD: Yes. But not before Judge Holt.

Same objection and ruling.

Opinion received in evidence.

Mr. ROCKWOOD: I offer in evidence extracts from the stenographer's minutes of the trial of United States against Edwin S. Holmes, Jr., being the testimony there given by Lewis C. Van Riper.

Mr. DORR: I object to that. Here is what Mr. Rockwood has offered. He is offering the testimony taken in a trial down in Washington as evidence here. Now I think that is going beyond all bounds; clearly, purely a matter of hearsay; no sworn witness on the record.

Mr. SPEICER: It was accepted as evidence in the prior removal proceeding.

Mr. ROCKWOOD: In which trial he testified to the date when the conspiracy was supposed to have been formed.

Mr. DORR: Suppose he did? It can't have any materiality here. He is not under oath in this proceeding.

275 The COMMISSIONER: I sustain the objection and give an exception.

Mr. ROCKWOOD: I offer in evidence the first New York indictment, being entitled United States against Moses Haas and Frederick A.

Peckham for conspiracy to commit an offence against the United States, found May 29, 1908.

Mr. DORR: I object to that as immaterial, incompetent and irrelevant.

Objection overruled. Exception.

Mr. ROCKWOOD: I offer in evidence the second New York indictment, being entitled United States against Edwin S. Holmes, Jr., Moses Haas and Frederick A. Peckham, Jr., for conspiracy to defraud the United States.

Same objection and ruling.

Mr. ROCKWOOD: I offer in evidence bench warrant issued by the United States Circuit Court for the Southern District of New York, dated May 29, 1908, for the arrest of Peckham.

Same objection and ruling.

Received in evidence.

Mr. ROCKWOOD: We offer in evidence the undertakings to appear and answer on the New York indictments given by the de-
276 fendant Peckham.

Same objection and ruling.

Received in evidence.

Mr. ROCKWOOD: I offer in evidence the demurrers interposed by the defendant Peckham to the indictment against him in New York City.

Same objection and ruling.

Received in evidence.

Mr. ROCKWOOD: I offer in evidence opinion of Judge Hough overruling the demurrers.

Same objection and ruling.

Received in evidence.

Mr. ROCKWOOD: I offer in evidence order of Judge Hough dated October 1st, 1908, overruling the demurrers.

Admitted.

Mr. ROCKWOOD: I offer in evidence the previous removal complaints offered before your Honor by Goldthwaite H. Dorr against the defendant Peckman.

Mr. DORR: I object to it as entirely immaterial. The complaint was withdrawn.

Mr. ROCKWOOD: It is proper as the basis of our motion and it cannot do him any harm.

277 Mr. DORR: It is not outstanding and was withdrawn before this proceeding was instituted.

Mr. STETER: But one of the matters set out in your opinion is that it is for the District Judge to determine whether under the circumstances removal should be had, and an eye should also be had to the question of whether or not the defendant is being unduly harrassed. Now, here one of the claims is that the Government being in a position to try the man here he should not be unduly annoyed and harrassed. Now how many more times is he to be arrested? That is one of the matters to be determined upon the application for removal. Suppose you withdrew this complaint tomorrow, do you say then you

could introduce in evidence the fact that he has been arrested in this proceeding?

Mr. DOAR: As the Government explained to Mr. Peckham's attorney, and as was explained to your Honor, the reason for withdrawing the previous complaint was a very simple one, and that is this: That the proceedings can proceed better separately than together; the complication of papers, the complication of warrants where more than one person is arrested on a removal complaint, and to
278 save, to improve the mechanics of the situation, to save trouble not only to the Government, but to your Honor and to the defendants themselves, it has seemed to the government more simple to have a separate complaint, and after conferring with your Honor this procedure was adopted.

Mr. ROCKWOOD: We want this record to show actually what occurred.

The COMMISSIONER: I might say I will sustain the objection on the ground that the Government has withdrawn the complaint.

Mr. ROCKWOOD: It is really a part of all the record before you and we are offering all the proceedings so far as we can.

The COMMISSIONER: It doesn't seem to me to do any harm.

Mr. DOAR: It is not a question of harm; but what possible relevancy has it to the matter before you?

The COMMISSIONER: The Commissioner sustains the objection on the ground that he understands that the Government had withdrawn that complaint and he doesn't see the relevancy of it in this proceeding.

Mr. ROCKWOOD: And we take an exception.

279 Mr. ROCKWOOD: Now we offer in evidence the previous warrants of arrest issued by your Honor for Peckham upon the previous removal complaint.

Same objection. Objection sustained.

Mr. STETLER: Your refusal does not conserve the rights of the defendants. It seems to me that the removal complaint and this warrant should be received. This man has been arrested on those warrants and if he can derive any benefit from the proof of the fact that he was arrested on those warrants you do not want to deprive him of the benefit of them, and I do not believe this defendant is given an absolutely square deal by the exclusion of these warrants. The Government never wants to put itself in the position of doing something that it would be ashamed of. If these proceedings were to produce Peckham we ought to have the benefit of them and you ought to give us the benefit of them. Now we understand what the determination of this application will be. As long as you held Haas we have no more reason for assuming that any other disposition is or ought to be made of this proceeding, because we have no other evidence, and we do not assume for a moment that you are going to make one decision for Haas and another for Peckham. In
280 the Haas case you permitted us, very properly to introduce them, and you said at that time that if the defendant can derive any benefit from what has been done let him derive that benefit. That is all we ask for Peckham, and we ought to have the benefit

of them on review when we apply for our writ of habeas corpus for him, and it does seem to me that you ought to receive those warrants and complaints. The Government states no objection except one of expediency; says it is immaterial because it has been withdrawn, but if it should be held that it should not have been withdrawn, if it should be held that Peckham should not be annoyed with numberless proceedings for his removal, if it should be held that in the whole history of the case those warrants and complaints should be considered, how can they be considered if you exclude them? If you take them in the Government cannot be harmed by an acquittal, nobody is injured; but by a conviction somebody is. And if there is a benefit to be derived from those you ought always to resolve this benefit in his favor, particularly in view of the fact when we are all agreed that the Government merely urges expediency as a ground for excluding what may be important to us. It cannot hurt the Government; it may hurt us. I don't say it will, but I say it
281 may, and we ought not to have a contingency like that received in a record of this kind.

Mr. DORR: It may be just as well for me to say as to the history of these complaints in answer to the imputation Mr. Steuer has made on the Government for harassing Mr. Peckham ——

Mr. STEUER: I am not saying that, but these should be in the record so we can use them.

Mr. DORR: Let me be heard without interruption. I think Judge Rockwood will bear me out, that at the time these complaints on removal were first filed they were filed at that time largely to enable Mr. Peckham and Mr. Haas to leave the jurisdiction and for their convenience, and they were filed at the particular time that they were at the request of the defendants' attorneys, isn't that so Judge Rockwood? I think you will recall the circumstance. Now, at that time the Government being anxious not to *harass* these defendants unduly framed the complaint in the form that it it did and joined both Haas and Peckham in one complaint. Now on further consideration it seeming to the Government by the mechanics of the case that it would be far simpler, and the practice of the Govern-
282 ment would be far better, to take individual complaints as well as individual warrants, for it would be necessary to take individual warrants I take it, and individual warrants on removal, the Government receded from the procedure in which it had hurried, or been hurried into at the instance of the defendant and adopted what seems the more orderly procedure, and one the doing of which could in no wise prejudice Mr. Peckham. Now I take it that it is merely incumbering the record to put in the matter of these previous complaints and warrants, a matter which is entirely irrelevant to the issue whether or not this defendant has or has not committed a crime in the District of Columbia.

Mr. STEUER: Now, the District Attorney has made his explanation; whether or not that explanation appeals to the District Judge is matter for the District Judge to determine. He may resolve that the District Attorney indulged in practice that was absolutely proper and very highly commendable. On the other hand it may be re-

solved that the rights of Mr. Peckham have been interfered with to such an extent as to bring about a declination of any application for his removal to the District of Columbia. The only way the District Judge can determine that matter is if those complaints and warrants are before him, and it could not be determined if they are
283 excluded. Now with the explanation made by the District Attorney with respect to those warrants and the complaints on removal, how can the Government's interests be hurt? On the other hand, we now concede more than that—that by the exclusion of these papers material rights of the defendant will be prejudiced.

Papers received in evidence.

Mr. Rockwood. Now I offer in evidence the petition of Peckham for a writ of Habeas corpus, verified October 2, 1905, and addressed to the Hon. George W. Ray, U. S. District Judge for the Northern District of New York, together with the affidavit of Wharton E. Lester, attached thereto. There is a direct reason why you should discharge Mr. Peckham which did not obtain in the last case, and that is this: Mr. Peckham was arrested at Saratoga, taken before Judge Ray in removal proceedings in the Northern District of New York on the old Washington indictments three years ago. The removal order was granted by Judge Ray. We then applied for a stay, which the Judge granted. We took an appeal to the Circuit Court of Appeals, which is going to be argued on December 10th here. In the meantime Mr. Peckham was discharged by Judge Ray on $12,000 bail, which he gave, and he therefore is now
284 legally in the custody of his bondsmen for removal to Washington upon these same indictments. Now if your Honor can see any way to hold him on this charge our hands are up.

Mr. Dorr. Your Honor, if those were the exact facts. The facts as I understood them are this: Judge That the removal proceedings in Saratoga were based upon certain indictments found in 1905. The complaint before your Honor is based on two indictments found in 1908, one of which indictments charges an offence as that of conspiring to commit an offence, namely, the offence of promising an officer of the United States to do an act in violation of his lawful duty, a charge which has never before been made against Mr. Peckham. The other indictment charges a conspiracy to defraud in relation to the 1905 report as distinguished from a long series of reports in which conspiracy was charged in the other indictments. So we have here complaints on removal for distinct offences; certainly one offence can by no means be twisted into the same offence as that found in the previous indictments on which Peckham now stands for removal.

Mr. Rockwood. Some of the counts here are identical with those other indictments on which Peckham now stands for removal.

Mr. Dorr. I don't believe you will find that here.

285 The Commissioner. Do you want to offer simply the writ of habeas corpus?

Mr. Rockwood. No. I want to offer the whole record to show he is now removed by an order of the District Judge. Now your Honor

is absolutely without jurisdiction to remove him here. This is different from the Haas case. Here is a man against whom there is a removal order outstanding, signed by the Judge, with the order of the Judge staying proceedings until the further order of the court pending appeal. Now how they can come on and get their other indictments by the very same state of facts the same conspiracy, alleging that in these new indictments there was a bribery, and in the old indictments they alleged payment of money to Hom*les* also, and remove him when there is an appeal pending is beyond my power of comprehension. Now it is a case where your Honor ought to do this, if you will permit me to say so: You ought to say, I will hold up this proceeding until the decision of the Circuit Court of Appeals is handed down.

Mr. DORR: The proposition of Judge Rockwood's case is this: That because a man has committed one offence and an effort has been made to remove him for trial to the jurisdiction where
286 that offence has been committed, that it was there that because an attempt has been made to remove him for one offence he cannot be removed if he has committed another offence; that is, Peckham can go down to Washington tomorrow and commit the offence of murder and cannot be removed from here if he fled to this jurisdiction because there is another appeal pending on removal proceedings in the Northern District of New York.

The COMMISSIONER: Is the offence for which he is before Judge Ray the same offence as here?

Mr. DORR: No, it is not. An examination of the complaint will show absolutely it is not.

Mr. ROCKWOOD: All right; I will submit to the reading of the record.

Mr. DORR: Do you contend there is any charge in the Northern District of New York against Peckham for conspiring to commit the offence of bribery of an officer of the United States?

Mr. ROCKWOOD: Yes. Not bribing. They don't use the word "Bribe," but conspiring to procure an officer of the United States, to-wit, Holmes, to commit the offence of misconduct in office by giving out advance information concerning the cotton crop report
287 and it is the very same identical crop report alleged here.

The COMMISSIONER: I will allow them in and give an exception.

Mr. ROCKWOOD: I want to read these three lines: "Ordered, by the execution of this order removal be stayed until the dismissal or determination of such appeal."

Mr. ROCKWOOD: Now I offer in evidence the proceedings before United States Commissioner Charles M. Davison, when he was arraigned upon the warrant issued against him in the proceedings in the Northern District of New York.

The COMMISSIONER: I will allow it in for what it is worth.

Mr. DORR: I object as immaterial, irrelevant and incompetent.

Mr. ROCKWOOD: I offer the record on appeal as filed in the office of the Clerk of the Circuit Court of Appeals in this District in the matter entitled United States Circuit Court of Appeals in the Second Circuit, Frederick A. Peckham against the United States.

Mr. STEUER: This record is clearly admissible now just as you disposed of the other matters before, because if after an examination of this record you come to the conclusion that it does not
288 affect your right to remove then you will commit him. The purpose of receiving all the evidence on a removal proceeding is to see whether or not it affects your right to remove. You see, the Government makes out its prima facie case when it proves identity and probable cause by the finding of the indictment. Now all the evidence you receive is only for the purpose of showing whether it will so affect your mind as to destroy your disposition to remove, so that you can never commit error by receiving it.

The COMMISSIONER: I will allow it in for what it is worth.

Mr. ROCKWOOD: Now we renew the motion for the dismissal of the defendant Peckham upon the same grounds urged at the close of the Government's case, and we now add to it as an additional and further ground this: That Mr. Peckham is at present under an order of the United States District Court for the Northern District of New York enlarged on bail and in the custody of his bail, and proceedings pending against him in that district for his removal to Washington upon the 1905 indictments, in which indictments he is charged in substance with the same alleged crimes set forth in these Washington indictments, that is, the same facts are set forth
289 substantially; and that there is a removal order now outstanding against him, the execution of which has been stayed by an order of United States Judge Ray; that two removal proceedings to the same district for the same crime cannot be instituted at the same time; that two removal orders to the same district for substantially the same offence cannot be issued at the same time, and that your Honor is without jurisdiction to commit Mr. Peckham for removal, he being in theory of law at present removed to the District of Columbia by the order of the District Judge for trial upon the 1905 indictments, and that the stay granted by Judge Ray operates as a stay in the proceedings here.

Mr. DOAR: On that point I would like to call your attention to Judge Hough's opinion in granting the consent of the Circuit Court of this District for the removal of Haas and this very defendant to the District of Columbia. He says there, if there is any conflict or any clash of jurisdiction claiming the same man that is a matter for the District Judge on the application for removal to determine. Here there is no clash, there is one jurisdiction asking a man from two places.

Mr. STEUER: If it is a matter for the District Judge to
290 determine then it is a matter for the Commissioner to determine here.

Mr. DOAR: No, because the Commissioner doesn't issue a warrant of removal.

Mr. STEUER: But then you make the determination whether removal should be had or not.

Decision reserved.

Mr. ROCKWOOD: Here is a man actually removed in theory of law to the District of Columbia and an order signed, but the execution

of it is stayed by the Judge. And let me call your Honor's attention to this point: Those 1905 indictments allege that they conspired to influence the June 1905 crop report and that is what these indictments do. It is the same crime alleged in another way. The same state of facts.

Mr. DORR: If your Honor will look at the indictments your Honor will see that not only is it a new crime charged, that is, a conspiracy under Sec. 5441, but also a new conspiracy to defraud the United States.

The COMMISSIONER: I will look them over.

291 Mr. ROCKWOOD: I will hand you a memorandum on this one point in the morning.

Hearing adjourned to Tuesday, December 1st, 1908, at 11 o'clock A. M.

292 26086.

In the Supreme Court of the District of Columbia.

TRANSCRIPT OF RECORD.

To all to whom these presents come, Greeting:

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District at the times hereinafter mentioned, among others, were the following proceedings, to wit:

293 Filed in Open Court May 29, 1908. J. R. Young, Clerk.

In the Supreme Court of the District of Columbia, Holding a Criminal Term, April Term, A. D. 1908.

DISTRICT OF COLUMBIA, *ss:*

The grand jurors of the United States of America, in and for the District of Columbia aforesaid, upon their oath, do present:

That before and during the three years last past the United States, through the Department of Agriculture and a certain bureau of that department, to wit, the Bureau of Statistics, has exercised the governmental function of acquiring and diffusing among the people of the United States useful information on subjects connected with agriculture, including the subject of cotton; that in acquiring such information pertaining to cotton the United States, through the said department and bureau, has made use of divers agencies, to wit, among others correspondence with cotton planters and dealers in and ginners of cotton, through employees and agents of the said department and bureau located in the several states where cotton is

grown, and through special investigations in the field by employees and agents of the said department and bureau; and that in diffusing the said information pertaining to cotton the United States has issued, on or near the third day of each of the months of June, July, August, September, October and December in each year crop
294 reports embracing statements, based upon the information so acquired, of the conditions of the cotton crop, by States, in the United States, with such explanations, comparison, and information as might be useful for illustrating that matter, —which said cotton-crop reports have been by law required to be submitted to and officially approved by the Secretary of Agriculture before so issued or published; and that under the practice, custom and regulation of the said department established and sanctioned by the said Secretary of Agriculture, no officer or employee thereof to whom such information might come by reason of his office or employment has been permitted to issue, publish or divulge to unauthorized persons, and all such officers and employees have been prohibited from issuing, publishing or divulging to unauthorized persons, any such information so acquired as aforesaid, or any such cotton-crop report, or any information indicating the probable contents or character of the same, in advance of its official issuance and publication, or without its first being submitted to and officially approved by the said Secretary.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that Moses Haas, Edwin S. Holmes, junior, and Frederick A. Peckham, each late of the District of Columbia, on the thirty-first day of May, in the year of our Lord one thousand nine hundred and five, at and within the said District of Columbia
295 unlawfully did knowingly conspire, combine, confederate and agree together, and with one Lewis C. Van Riper, who is not made a defendant herein, to defraud the United States of and concerning its governmental function in the matter of issuing and publishing the cotton-crop report to be issued and published by the said department and bureau in the then next succeeding month of June, and of its right to administer an intelligent and honest service in that behalf in the interests of the people of the United States, to be accomplished by the means and methods and under the circumstances and conditions now here set forth and described; that is to say:

The said Edwin S. Holmes, junior, before and on the day last aforesaid, was an officer and employee of the said department and bureau, to wit, associate statistician thereof; and a portion of the information upon which the said cotton-crop report was to be based, and which had been acquired by the said department and bureau in the manner aforesaid, and indicated the probable contents and character of the said report, had come and was known to the said Edwin S. Holmes, junior, in his capacity as such officer and employee; and thereafter, and before the time *it* the official issuance and publication of the said report, other like information would come to and be known to the said Edwin S. Holmes, junior, in his said capacity,

The said Frederick A. Peckham, Moses Haas and Lewis C. Van Riper, who then and there were neither officers nor employees either of the said department or of the said bureau, and who then and there were persons not in any manner authorized to have or
296 know the information last aforesaid, or be informed as to the probable contents or character of the said crop report in advance of its said official issuance and publication, or without such report first being submitted to and officially approved by the said Secretary, and who well knew all the premises in this indictment above set forth, were thereafter, and in advance of the said official issuance and publication of the said cotton-crop report, to obtain and receive from the said Edwin S. Holmes, junior, and the said Edwin S. Holmes, junior, also then well knowing the said premises, was to give and divulge to them the said Frederick A. Peckham, Moses Haas and Lewis C. Van Riper information which as aforesaid had and would come and be known to him the said Edwin S. Holmes, junior, in his said capacity as an officer and employee of the said department and bureau, and this without the said cotton-crop report being first submitted to and officially approved by the said Secretary of Agriculture, it being the design and intention of the said Frederick A. Peckham, Moses Haas, Edwin S. Holmes, junior, and Lewis C. Van Riper in so doing to make use of the said information, before the lawful issuance and publication of the said report, for their pecuniary benefit, in speculating in cotton, in view of the probable effect upon the market price of that commodity which the subsequent lawful issuance and publication of the said cotton crop report would have, and in other ways to the said grand jurors unknown.

297 *Overt Acts.*

1. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said Moses Haas, at the District of Columbia, on the said thirty-first day of May, in the year of our Lord nineteen hundred and five, unlawfully did promise and offer to give to the said Edwin S. Holmes, junior, a certain share of whatever moneys they, the said Moses Haas and Frederick A. Peckham and the said Lewis C. Van Riper, or either of them, should acquire through speculations in cotton based upon information to be furnished by the said Edwin S. Holmes, junior, to them, which information has been or should be acquired by the said Edwin S. Holmes, junior, in his official capacity as to the probable contents of the cotton-crop report to be issued in the month of June then next ensuing.

2. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that further in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said Moses Haas unlawfully did meet and confer with the said Lewis C. Van Riper at the City of New York, in the Southern District of New York, on the said thirty-first day of May, in the year of our Lord nineteen hundred and five.

3. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that further in pursuance of the
298 said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said Moses Haas, afterwards, to wit, on the first day of June, in the year of our Lord nineteen hundred and five, unlawfully did journey from the said City of New York in said Southern District of New York to the said City of Washington, said District of Columbia.

4. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that further in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said Moses Haas, afterwards, to wit, on the said first day of June, in the year nineteen hundred and five, unlawfully did obtain from the said Edwin S. Holmes, junior, at said District of Columbia, certain information which was to be contained in said cotton-crop report to be issued in said month of June, nineteen hundred and five, and which had been acquired by the said Edwin S. Holmes, junior in the performance of his duties as such accounts statistician.

5. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that further in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said Moses Haas at the said City and southern District of New York on the said second day of June, in the year nineteen hundred and five unlawfully did communicate the said information so obtained as last aforesaid by him from the said Edwin S. Holmes, junior, to the said Lewis C. Van Riper.

299 And so, the grand jurors aforesaid, upon their oath aforesaid, do say, that the said Moses Haas the said Edwin S. Holmes, junior, and the said Frederick A. Peckham, at the time and place and in manner and form aforesaid, unlawfully did conspire together, and with others to defraud the United States, and did each do acts to effect the object of the said conspiracy; against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

DANIEL W. BAKER,
Attorney of the United States in and for the District of Columbia.

(Endorsed:) No. 26086. United States vs. Edwin S. Holmes, Junior, Frederick A. Peckham, and Moses Haas. Conspiracy to defraud the United States. Witnesses: Andrew Parker, Sam'l Baulris, Wm. L. Lanning, Nathaniel Murray, Louis C. Van Riper, Herbert H. Smith, Richard A. Springs, Victor Armstead, Russell R. Coates, Walter Mayer. A true bill. E. J. Walsh, Foreman.

300 *Authentication.*

Supreme Court of the District of Columbia.

I, John R. Young, Clerk of the said Court, do hereby certify that the following copy of indictment, annexed to this certificate, is a

true copy of the original on file and of record in said office, and that said original indictment is pending in said court.

Witness my hand and the seal of said Court, this 30th day of October, 1908.

[SEAL.] JOHN R. YOUNG, *Clerk.*

I, Harry M. Clabaugh, Chief Justice of said Court, do certify the foregoing attestation by John R. Young, Clerk of the said Court, to be in due form.

Witness my hand and seal this 30 day of October, 1908.

HARRY M. CLABAUGH, [SEAL.]
Chief Justice.

I, John R. Youngs, Clerk of said Court, hereby certify that the Honorable Harry M. Clabaugh, whose genuine signature is subscribed to the foregoing certificate, was, at the time of signing and attesting the same, Chief Justice of said Court, duly commissioned and qualified.

Witness my hand and the seal of said Court, this 30th day of October, 1908.

[SEAL.] JOHN R. YOUNG, *Clerk.*

301 In the Supreme Court of the District of Columbia.

TRANSCRIPT OF RECORD.

To all to whom these presents come, Greeting:

UNITED STATES OF AMERICA.
District of Columbia, ss:

Be it remembered, that in the Supreme Court of the District of Columbia, at the City of Washington, in said District at the times hereinafter mentioned, among others, were the following proceedings, to wit:

302 Filed in Open Court May 29, 1908. J. R. Young, Clerk.

In the Supreme Court of the District of Columbia, Holding a Criminal Term, April Term, A. D. 1908.

DISTRICT OF COLUMBIA, *ss:*

The grand jurors of the United States of America, in and for the District of Columbia aforesaid, upon their oath do present:

That in the administrative arrangement of the business of the Department of Agriculture of the said United States, on and before the thirty-first day of May, in the year nineteen hundred and five, there was, and from thence hitherto there has been, a bureau designated and known as the Bureau of Statistics; and that during the time and times aforesaid the said Bureau was under the management

of an officer and employee of the said United States and of the said Department of Agriculture designated and known as statistician and as chief of the Bureau of Statistics; and that during the time and times aforesaid there were in the said bureau other officers and employees of the said United States and of the said Department of Agriculture, one of whom was designated and known as associate statistician and another of whom was designated and known as assistant statistician and as assistant chief of the Bureau of Statistics; and that during the time and times aforesaid whenever the said statis-
303 tician was absent from his said office, the said Bureau was under the management of the said associate statistician, who acted in the place and stead of said statistician as chief of said Bureau.

And that during the time and times aforesaid the said statistician with the aid and assistance of the said associate statistician and of the other officers and employees of the said United States employed in said Bureau, and in the absence of the said statistician, and the said associate statistician with the aid and assistance of the other officers and employees aforesaid of said Bureau, was charged with the duty of preparing during certain months in each year certain reports upon the conditions of certain of the crops grown and raised in the United States, which reports became known as and were called crop reports, and that each of said crop reports was by law required to embrace statements of the conditions of the crops therein mentioned by States of the said United States, with such explanations, comparisons and information as might be useful for illustrating the matter contained in said reports, and that each of such reports was required by law to be submitted to and officially approved by the Secretary of Agriculture before being issued or published.

That each of said reports was prepared by the said statistician or the said associate statistician in the manner aforesaid, from certain information collected by the said Bureau from divers sources approved by the said Bureau; amongst others being certain correspond-
ents of the said Bureau of Statistics residing in those parts of
304 the United States where were grown the particular crops upon which they furnished information, and who were persons having special knowledge upon the subject, and certain employees of the said Bureau, known as Statistical Agents, and certain other expert employees of the said Bureau, whose duty it was to travel throughout the United States and ascertain the conditions of the said crops.

And that during the time and times aforesaid whenever the said statistician or the said associate statistician had as aforesaid prepared any of said reports, he, the said statistician, or the said associate statistician, as the case might be, in accordance with the requirement of law last aforesaid submitted the said report so prepared to the Secretary of Agriculture for the latter's official approval; and that whenever any of said reports was so submitted *by* said Secretary of Agriculture for his official approval, he, the said Secretary of Agriculture, in the usual course of business in his said department, and relying upon the proper performance of his duty in the preparation of said report by the said statistician or by the said associate statistician,

as the case might be, officially approved the same; and that after such official approval by the said Secretary of Agriculture thereof, and not until such approval was given, each of said reports was issued and published by the said Department of Agriculture.

And that during the time and times aforesaid, the said crop
305 reports were prepared, approved, and issued and published for the purpose of diffusing the information therein contained among the people of the United States, and that said crop reports were prepared at great expense to the said United States and were to be fair, impartial, correct and accurate; and the said crop reports and each of them upon their issuance and publication after being submitted to and officially approved by the Secretary of Agriculture as aforesaid, did affect to a great or less extent the market price of the several crops mentioned therein.

That during the time and times aforesaid a custom and practice prevailed in the said Department of Agriculture, established and sanctioned by the said Secretary, under which the giving out to the public of any information collected by the said Bureau of Statistics or its said officers or its said employees, to be used in the preparation of or to be contained in any of said crop reports, was prohibited, and the keeping of such information secret was required, except such information as was contained in said crop reports when and after the same had been officially issued and published. And that during the time and times aforesaid it was the duty of the said statistician and of the said associate statistician and said other officials and employees aforesaid of the said Bureau of Statistics to prepare a true and accurate report upon each of the said crops, from the information as to said crops obtained as aforesaid, and without regard to the influence which any such report might have upon the market price of the crop therein mentioned.

306 And that during the time and times aforesaid the said statistician and the said associate statistician and the other officers and employees aforesaid of the said Bureau of Statistics were charged with the duty of honestly and carefully guarding and keeping secret and of not divulging to any person not employed in or connected with said Bureau of Statistics any information acquired by him or them in the course of preparing and assisting in preparing the said crop reports and in collecting statistics and compiling statistical matter for use in the preparation of said crop reports, or any of the matters and things and other information which might be contained in any of said crop reports, until said crop reports had been prepared, officially approved, and issued and published as aforesaid, and thereafter said duty of so maintaining secrecy as aforesaid continued save and except as to the matters and things so officially made public in said reports.

And that among the said crop reports so prepared by the said statistician with the aid and assistance of said associate statistician and said other officers and employees of the said Bureau of Statistics, and, in the absence of said statistician, so prepared by the said associate statistician with the aid and assistance of said other officers and employees of the said Bureau of Statistics as aforesaid, and so sub-

mitted to and officially approved by the said Secretary of Agri-
307 culture as aforesaid, was a report upon the cotton crop of the United States, which became known as and was called the cotton-crop report, and which said cotton crop report during the time and times aforesaid was issued and published on or about the third day of each of the months of June, July, August, September, October and December in each year.

That on the sixteenth day of November, in the year nineteen hundred and three, and thence continuously until the ninth day of June, in the year nineteen hundred and five, one Edwin S. Holmes, junior, held and occupied the office of and was such associate statistician in the said Bureau of Statistics in the Department of Agriculture, and as such was an officer of the United States and a person acting for and on behalf of the United States in an official function under and by authority of the said Department and Bureau, and as such associate statistician the said Edwin S. Holmes, junior, was during the period last aforesaid charged with the duty of aiding and assisting the said statistician in the preparation of said crop reports, including said cotton crop report, and, in the absence of the said statistician from his office, the said Edwin S. Holmes, junior, as such associate statistician, was during the period last aforesaid charged with the duty of preparing with the aid and assistance of said other officers and employees of said Bureau as aforesaid, all of the said crop reports, including the said cotton-crop reports as aforesaid, and that during the period last aforesaid, in the performance of his duties as said associate statistician in assisting the
308 said statistician in the preparation of said crop reports, including said cotton-crop reports, and, in the absence of the said statistician, in the performance of his duties in preparing said crop reports, including the said cotton-crop reports, he, the said Edwin S. Holmes, junior, did, before the official approval and issuance and publication of each of said crop reports, including the said cotton-crop reports, acquire and have knowledge of the statistics and statistical matter from which said crop reports, including said cotton-crop reports, were prepared, and of the matters and things and other information which were to be contained in each of said crop reports, including said cotton-crop reports.

And that during the period last aforesaid it was the duty of said Edwin S. Holmes, junior, as such associate statistician, whenever he prepared or assisted in preparing any of said reports, to prepare and assist in preparing a true and accurate report, from the information as to said crops obtained as aforesaid, and without regard to the effect which such reports might have upon the market price of the crop therein mentioned, and honestly and carefully to guard and keep secret and not to divulge to any person not employed in or connected with said Bureau of Statistics any of the said statistics and statistical matter and information from which said crop reports, including said cotton crop reports, were to be prepared, and of the matters and things and other information which
309 were to be contained in any of said crop reports, including said cotton crop reports, knowledge of which was so, as afore-

said acquired by him, the said Edwin S. Holmes, junior, as such associate statistician, until the said reports had been prepared, officially approved, and issued and published as aforesaid, and it was the duty of the said Edwin S. Holmes, junior, as such associate statistician, to thereafter honestly and carefully guard and keep secret and not divulge to any person not employed in or connected with said Bureau of Statistics any of the statistics and statistical matter and matters and things and other information last aforesaid, knowledge of which was so, as aforesaid, acquired by him, except such matters and things and other information as were included in and officially made public in said reports.

All and singular of which the premises and several premises aforesaid, in so far as they were then existent, were known to a certain Frederick A. Peckham and to a certain Moses Haas, at the time of the commission by them of the offense hereinafter set forth, and to a certain Lewis C. Van Riper.

That on the thirty-first day of May, in the year nineteen hundred and five, at the District of Columbia, aforesaid, said Moses Haas and said Frederick A. Peckham unlawfully did conspire, combine, confederate and agree together with said Lewis C. Van Riper, who is not made a defendant herein, to commit an offense
310 against the United States; that is to say, the offense of promising, offering and giving to an officer of the United States, and a person acting for and on behalf of the United States in an official function under and by virtue of a certain department and office of the government thereof; that is to say, to the said Edwin S. Holmes, junior, associate statistician of the said Bureau of Statistics as aforesaid, a sum of money, the amount of which is to the grand jurors aforesaid unknown, to induce him, the said Edwin S. Holmes, junior, to do certain acts in violation of his lawful duty, that is to say, to induce him, the said Edwin S. Holmes, junior, unlawfully and in violation of the said duty of him, the said Edwin S. Holmes, junior, as such associate statistician, honestly and carefully to keep secret all the statistics and statistical matter and information, knowledge of which was acquired by him as aforesaid as such associate statistician, and in advance of the official issue and publication of the said cotton crop report, which was to be issued, as hereinbefore set forth, in the month of June next ensuing and in advance of the time when the matter and information contained in such cotton crop report could lawfully be made public, to furnish, in so far as in him the power lay, to the said Moses Haas and the said Frederick A. Peckham and the said Lewis C. Van Riper, the statistics, matter and information which were to be contained in said report, knowledge of which was, as aforesaid, acquired by said Edwin S. Holmes, junior, in the performance of his duty as such associate statistician.

311 *Overt Acts.*

1. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object

of the same, the said Moses Haas, at the city of Washington, in the District of Columbia, on the said thirty-first day of May, in the year nineteen hundred and five, unlawfully did promise and offer to give to the said Edwin S. Holmes, junior, a certain share, to wit, a sum equal to one-fourth, of whatever moneys they, the said Moses Haas and Frederick A. Peckham and the said Lewis C. Van Riper or either of them should acquire through speculations in cotton based upon information to be furnished by the said Edwin S. Holmes, junior, to them which information was to be contained in the cotton crop report to be issued in the month of June then next ensuing.

2. And the grand jurors aforesaid, upon their oath, aforesaid, do further present, that further in pursuance of the said unlawful conspiracy, combination confederation and agreement, and to effect the object of the same, the said Moses Haas unlawfully did meet and confer with the said Lewis C. Van Riper at the City of New York, in said Southern District of New York, on the said thirty-first day of May, in the year nineteen hundred and five.

3. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that further in pursuance of the said unlawful
312 conspiracy, combination, confederation and agreement, and to effect the object of the same, the said Moses Haas afterwards, to wit, on the first day of June, in the year nineteen hundred and five, unlawfully did journey from the said city of New York, in the said Southern District of New York, to the said city of Washington, in said District of Columbia.

4. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that further in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said Moses Haas afterwards, to wit, on the said first day of June, in the year nineteen hundred and five, unlawfully did obtain from the said Edwin S. Holmes, junior, at the said city of Washington, in said District of Columbia, certain information which was to be contained in said cotton crop report to be issued in said month of June, nineteen hundred and five, and which had been acquired by the said Edwin S. Holmes, junior, in the performance of his duties as such associate statistician.

5. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that further in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the objects of the same, the said Moses Haas, at the said city and Southern District of New York, on the said second day of June, in the year nineteen hundred and five, unlawfully did communicate the
313 said information so obtained as last aforesaid by him from the said Edwin S. Holmes, junior, to the said Lewis C. Van Riper.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said Moses Haas and the said Frederick A. Peckham, at the time and place and in manner and form aforesaid, unlawfully did conspire together, and with others, to commit an offense against the United States, and did each do acts to effect the object of the said conspiracy; against the peace and dignity of the United States, and

contrary to the form of the statute of the same in such cases made and provided.

DANIEL W. BAKER,
Attorney of the United States in and for the District of Columbia.

(Endorsed:) No. 26087. United States vs. Moses Haas and Frederick A. Peckham. Conspiracy to Commit an Offense against the United States. Witnesses: Andrew Parker, Sam'l Baulsir, Wm. L. Lenning, Nathaniel Murray, Louis C. Van Riper, Herbert H. Smith, Rich'd. A. Springs, Victor Armstead, Russell R. Coates, Walter Mayer. A true bill—E. J. Walsh, Foreman.

314 *Authentication.*

Supreme Court of the District of Columbia.

I, John R. Young, Clerk of the said Court, do hereby certify that the *following* copy of indictment, annexed to this certificate, is a true copy of the original on file and of record in said office, and that said original indictment is pending in said Court.

Witness my hand and the seal of said Court, this 30th day of October, 1908.

[SEAL.] JOHN R. YOUNG, *Clerk.*

I, Harry M. Clabaugh, Chief Justice of said Court, do certify the foregoing attestation by John R. Young, Clerk of the said Court, to be in due form.

Witness my hand and seal this 30th day of October, 1908.

HARRY M. CLABAUGH. [SEAL.]
Chief Justice.

I, John R. Young, Clerk of said Court, hereby certify that the Honorable Harry M. Clabaugh, whose genuine signature is subscribed to the foregoing certificate, was, at the time of signing and attesting the same, Chief Justice of said Court, duly commissioned and qualified.

Witness my hand and the seal of said Court, this 30th day of October, 1908.

[SEAL.] JOHN R. YOUNG, *Clerk.*

315 *Authentication of Record.*

Supreme Court of the District of Columbia.

I, John R. Young, Clerk of the said Court, do hereby certify that the writing annexed to this certificate are true copies of original bench warrants on file and of record in said court in said causes, and that the indictments upon which said bench warrants were issued are still pending undetermined.

Witness my hand and the seal of said court this 25th day of November, 1908.

[SEAL.] (Sgd.) JOHN R. YOUNG, *Clerk*,
By —— ——, *Ass't Clerk*.

I, Harry M. Clabaugh, Chief Justice of said Court, do certify the foregoing attestation by John R. Young, Clerk of the said court, to be in due form.

Witness my hand and seal this 25th day of November, 1908.

(Sgd.) HARRY M. CLABAUGH. [SEAL.]
Chief Justice.

I, John R. Young, Clerk of said Court, hereby certify that the Honorable Harry M. Clabaugh, whose genuine signature is
316 subscribed to the foregoing certificate, was, at the time of signing and attesting the same, Chief Justice of said court, duly commissioned and qualified.

Witness my hand and the seal of said court, this 25th day of November, 1908.

[SEAL.] (Sgd.) JOHN R. YOUNG, *Clerk*,
By —— ——, *Ass't Clerk*.

317 In the Supreme Court of the District of Columbia, Holding a Criminal Term.

Criminal. No. 26086.

THE UNITED STATES
vs.
FREDERICK A. PECKHAM.

Indicted for Conspiracy to Defraud the U. S.

The President of the United States to the United States Marshal for the District of Columbia, Greeting:

You are hereby commanded to take the defendant, Frederick A. Peckham, if to be found in your district, and him have before the Criminal Court of the said District of Columbia immediately to answer the United States touching the offense charged against him.

Hereof fail not, and have there then this writ, so indorsed as to show how you have executed it.

Witness, the Honorable Harry M. Clabaugh, Chief Justice of said Court, the 2nd day of November, A. D. 1908.

(Sgd.) JOHN R. YOUNG, *Clerk*,
(Sgd.) By WM. F. LEMON,
Assistant Clerk.

318 In the Supreme Court of the District of Columbia, Holding a Criminal Term.

Criminal. No. 26087.

THE UNITED STATES
vs.
FREDERICK A. PECKHAM.

Indicted for Conspiracy to Commit an Offense Against the U. S.

The President of the United States to the United States Marshal for the District of Columbia, Greeting:

You are hereby commanded to take the defendant, Frederick A. Peckham, if to be found in your District, and him have before the Criminal Court for the said District of Columbia, immediately to answer the United States touching the offense charged against him.

Hereof fail not, and have there then this writ, so indorsed as to show how you have executed it.

Witness, the Honorable Harry M. Clabaugh, Chief Justice of said Court, the 2nd day of November, A. D. 1908.

(Sgd.) JOHN R. YOUNG, *Clerk*.
(Sgd.) By WM. F. LEMON,
Assistant Clerk.

319 24866.

Ex. A. Jd. 11/7/08.

In the Supreme Court of the District of Columbia.

TRANSCRIPT OF RECORD.

To all to whom these presents come, Greeting:

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, among others, were the following proceedings, to wit:

320 Filed in Open Court August 22, 1905. J. R. Young, Clerk.

In the Supreme Court of the District of Columbia, Holding a Criminal Term, April Term, A. D. 1905.

DISTRICT OF COLUMBIA, *ss:*

The Grand Jurors of the United States of America, in and for the District of Columbia aforesaid, upon their oath do present:

That in the administrative arrangement of the business of the

Department of Agriculture of the said United States on and before the second day of June, in the year of our Lord one thousand nine hundred and four, there was, and thence hitherto there has been, a bureau designated and known as the Bureau of Statistics; and that during the time and times aforesaid the said Bureau was under the management of an officer and employee of the said United States and of the said Department of Agriculture designated and known as statistician and as chief of the Bureau of Statistics; and that during the time and times aforesaid there were in the said Bureau other officers and employees of the said United States and of the said Department of Agriculture, one of whom was designated and known as associate statistician and another of whom was designated and known as assistant statistician, and as assistant chief of the Bureau of Statistics; and that during the time and times aforesaid whenever the said statistician was absent from his said office, the said Bureau was under the management of the said associate statistician, who acted in the place and stead of said statistician as chief of said Bureau.

321 And that during the time and times aforesaid the said statistician with the aid and assistance of the said associate statistician and of the other officers and employees of the said United States employed in said Bureau, and in the absence of the said statistician, the said associate statistician with the aid and assistance of the other officers and employees aforesaid of said Bureau, was charged with the duty of preparing during certain months in each year certain crop reports, and that each of said crop reports was by law required to embrace statements of the conditions of the crops therein mentioned by States of the said United States, with such explanations, comparisons and information as might be useful for illustrating the matter contained in said reports, and that each of such reports was required by law to be submitted to and officially approved by the Secretary of Agriculture before being issued or published; and that during the time and times aforesaid after the said statistician or the said associate statistician had in the manner aforesaid prepared any of said reports, he, the said statistician, or the said associate statistician, as the case might be, in accordance with the requirement of law last aforesaid submitted the said report so prepared to the Secretary of Agriculture for the latter's official approval; and that whenever any of said reports was so submitted to said Secretary of Agriculture for his official approval, he, the said Secretary of Agriculture, as a matter of course in the ordinary routine of his office, and relying upon the proper performance of their duties in the preparation of said report by the said statis-
322 tician and the said associate statistician, officially approved the same; and that after such official approval by the said Secretary of Agriculture thereof, and not until such approval was given, each of said reports was issued and published by the said statistician or by the said associate statistician acting in his place and stead.

And that during the time and times aforesaid, the said crop reports were prepared, approved and issued and published for the purpose of diffusing the information therein contained among the

people of the United States, and that said reports were intended to be as nearly fair, impartial, correct and accurate as it was possible for such reports to be; and the said reports and each of them upon their issuance and publication after being submitted to and officially approved by the Secretary of Agriculture as aforesaid, did affect to a greater or less extent the market price of the several crops mentioned therein.

And that during the time and times aforesaid the said statistician and the said associate statistician and the other officers and employees aforesaid of the said Bureau were charged with the duty of honestly and in good faith assisting in the preparation of the said reports and of carefully guarding and keeping secret and of not divulging to any person outside of said bureau any information acquired by him or them in such preparation of said reports, until said reports had been prepared, officially approved, issued and published as aforesaid, and thereafter said duty of so maintaining secrecy as aforesaid continued save and except as to the matters and things so officially made public in said reports.

323

And that among the said crop reports so required by law to be prepared, approved, issued and published by the Department of Agriculture as aforesaid, was a report upon the condition of the cotton crop, which said cotton crop report during the time and times aforesaid was issued and published on or about the third day of each of the months of June, July, August, September, October and December in each year.

That on the sixteenth day of November, in the year of our Lord one thousand nine hundred and three, and thence continuously until the ninth day of June, in the year of our Lord one thousand nine hundred and five, one Edwin S. Holmes, Junior, late of the District aforesaid, held and occupied the said office of associate statistician, and as such associate statistician was charged with the duties hereinbefore set forth; all and singular of which the premises and several premises aforesaid, in so far as they were then existent, were known to the said Edwin S. Holmes, Junior, and to a certain Frederick A. Peckham and to a certain Moses Haas, both late of the District aforesaid, at the time of the commission by them of the offense hereinafter set forth.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present:

That on the second day of June, in the year of our Lord one thousand nine hundred and four, and at the District aforesaid, the said Edwin S. Holmes, Junior, and the said Frederick A. Peckham and the said Moses Haas unlawfully and fraudulently did conspire, combine, confederate and agree together to defraud the said United States, in the dishonest manner and through and by means of the dishonest scheme and arrangement following, that is to say:

324

That they, the said Frederick A. Peckham and the said Moses Haas should and would procure some other person or persons possessed of money who was and were not employed in or connected with said Bureau and who should and would, with the guidance and

assistance of information to be furnished by the said Edwin S. Holmes, Junior, in contravention of said *said* duties as said associate statistician, and in violation of the confidence reposed in him by the said Secretary of Agriculture engage in buying and selling cotton as hereinafter set forth; and that he, the said Edwin S. Holmes, Junior, should and would in so far as in him the power lay, some time in advance of the official issuance and publication of each of said cotton crop reports, and in contravention of his duties in the premises as such associate statistician, furnish to the said Frederick A. Peckham and to the said Moses Haas, or directly to such person or persons so to be procured by the said Frederick A. Peckham and the said Moses Haas, before the official issuance and publication of each of said cotton crop reports as hereinbefore set forth, and in advance of the time or times when the same could legally be made public, the facts and figures and other information which were to be contained in said report, and that the said Frederick A. Peckham and the said
325 Moses Haas, whenever such information was so furnished to them or either of them should and would before the official issuance and publication of said report, communicate the said information to said person or persons so to be procured by them the said Frederick A. Peckham and the said Moses Haas; and that thereupon the said person or persons so to be procured by the said Frederick A. Peckham and the said Moses Haas should and would, and before the official issuance and publication of said report, and with the aid and guidance of said information so furnished by the said Edwin S. Holmes, Junior, buy or sell cotton in large quantities, as the case might be, according as the market price of cotton might be affected in the one way or the other by the information contained in said report when the same should be officially approved by the Secretary of Agriculture and issued and published; and that after said report last mentioned had been so officially approved and issued and published, the said person or persons last mentioned should and would sell or buy, as the case might be, large quantities of cotton corresponding in amount to the quantities so bought or sold before the official issuance and publication of said report and would thereby make large gains and profits; and that such large gains and profits so made would thereafter be divided among such person or persons last aforesaid and the said Edwin S. Holmes, Junior and the said Frederick A. Peckham and the said Moses Haas in proportions to be agreed upon by them.

And the Grand Jurors aforesaid, upon their oath aforesaid do further present:

326 That in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object thereof, the said Frederick A. Peckham at the District aforesaid on the sixth day of August in the year of our Lord one thousand nine hundred and four did write and send by telegraph to one Lewis C. Van Riper at the City of New York in the State of New York a telegram of the tenor following, that is to say:

"16 WASHINGTON, D. C., *Aug.* 6–'04

L. C. Vanriper, Room 1001 No. 20, Broad St., N. Y.:

Come to Washington at once wire me Raleigh hotel time of arrival don't advise Mrs. P.

FRED. 1.19 p. m."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, the said Frederick A. Peckham on the seventh day of August, in the year of our Lord one thousand nine hundred and four, did meet the said Lewis C. Van Riper who was not during the time and times aforesaid employed or connected with said Bureau, and did then and there cause the said Lewis C. Van Riper to meet the said Edwin S. Holmes, Junior.

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, and on the eighteenth day of August, in the year of our Lord one thousand nine hundred and four, the said Edwin S. Holmes, Junior, did write
327 and mail to the said Lewis C. Van Riper at the city of New York in the State of New York a letter of the tenor following, that is to say:

"AUG. 18, '04.

DEAR MR. VAN RIPER: Other parties have changed plans slightly and I think it advisable for you to know about it.

Can't you come here Saturday night or Sunday? If not, I might be able to go to N. Y. Saturday afternoon. Write me on receipt of this and, if you decide to come here, tell me when to meet you and where.

Yours,

H."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, the said Edwin S. Holmes, Junior, on the thirtieth day of August, in the year of our Lord one thousand nine hundred and four, did write and mail to the said Lewis C. Van Riper at the City of New York in the State of New York a letter of the tenor following, that is to say:

"AUG. 30, '04.

If you have bought any of that stuff sell it out at once, and *sell* as much as you can in addition. We are going to show very slight decline, and, as this is totally unexpected, it will send things down like fury.

Other parties will close out tomorrow, and sell on Thursday.

Where is P?

328 Tear this up.

H

It may go up a little before Friday but probably not."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, the said Frederick A. Peckham on the thirty-first day of August, in the year of our Lord one thousand nine hundred and four, did write and mail to the said Lewis C. Van Riper at the City of New York in the state of New York a letter of the tenor following, that is to say:

"WASHINGTON, D. C., *Aug.* 31, 1904.

L. C. Van Riper, Esq., 108 Fulton St., N. Y. City.

DEAR VAN: About 85. It will surprise everybody and cause big drop is opinion of best experts. There will be things doing *sure*. A drop of only (about) six points. This is one of the highest averages for this (Sept.) month ever known. Is way above the 10 year average. Tear this up. Do all you can.

F."

And in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, the said Frederick A. Peckham on the thirty-first day of August, in the year of our Lord one thousand nine hundred and four, did write and mail to
329 said Lewis C. Van Riper at the City of New York in the State of New York another letter of the tenor following, that is to say:

"WASHINGTON, D. C., S 31, 1904.

10.30 P. M.

Letter No. 2.

Party for prices here tonight to make sure of figures. Tomorrow (Thursday) they are going to sell all they can without breaking market if they can. It may break tomorrow Saturday soon as report is out (perhaps before) they cut loose selling everything in sight. Get in tomorrow early. *Be sure to close out Friday* as soon as effect of report has been shown.

No market Saturday (Holiday) & none Monday so I understand. This is the best chance we will have.

Destroy."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, the said Frederick A. Peckham and the said Edwin S. Holmes, Junior, by means of the letters hereinbefore set forth, and before the official issuance and publication of the cotton crop report in the month of September, in the year of our Lord one thousand nine hundred and four, so far as in the said Edwin S. Holmes, Junior, the power lay, did furnish to the said Lewis C. Van Riper the facts, figures and information to be contained in said cotton crop report so to be issued and published on or about the third day of September in said last mentioned year.

330 And the Grand Jurors aforesaid, upon their oath aforesaid, do further present, that the said Lewis C. Van Riper, with the guidance and assistance of the facts, figures and information so as last aforesaid furnished to him by the said Edwin S. Holmes, Junior, and by the said Frederick A. Peckham, did on the thirtieth day of August, in the year of our Lord one thousand nine hundred and four, and on divers other days between said last mentioned day and the second day of September in the same year, and before the official issuance and publication of the cotton crop report on said last mentioned day, sell large quantities of cotton at the prices then prevailing in the open market; and that on said last mentioned day the said cotton report was officially issued and published, and that after the said official issuance and publication of said last mentioned cotton crop report there was a decline in the market price of cotton; and that thereupon, and after such official issuance and publication of said last mentioned report and after said decline in the market price of cotton the said Lewis C. Van Riper bought large quantities of cotton corresponding in quantity with the amounts so theretofore sold by him and at prices lower than those at which he had so sold said cotton, and did thereby make large gains and profits, to wit, gains and profits to the amount of twenty-six hundred and eighty dollars.

And the said Grand Jurors aforesaid, upon their oath aforesaid, do further present:

That in further pursuance of the said unlawful conspiracy,
331 combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, the said Frederick A. Peckham on the third day of September, in the year of our Lord one thousand nine hundred and four, did receive from the said Lewis C. Van Riper the sum of one hundred and fifty dollars in the national currency and money of the said United States, and three checks drawn by the said Lewis C. Van Riper to the order of said Frederick A. Peckham, one of said checks being for the sum of two hundred and twenty dollars and another of said checks being for the sum of three hundred dollars, and the third of said checks being for the sum of six hundred and seventy dollars, a more particular description of which said checks for the sum of two hundred and twenty dollars and three hundred dollars the Grand Jurors aforesaid are unable to give, and the said check for the sum of six hundred and seventy dollars being of the tenor following, that is to say:

"No. XXX. HOBOKEN, N. J., *Sept. 3rd*, 1904

The Second National Bank of Hoboken, Through the New York Clearing House Association.

Pay to F. A. Peckham or order Six hundred seventy & No 100 Dollars

$670.00 100.

LEWIS C. VAN RIPER."

332 And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to

further effect the object thereof, and at the District aforesaid, the said Frederick A. Peckham on the third day of September, in the year of our Lord one thousand nine hundred and four, did give to the said Lewis C. Van Riper a receipt of the tenor following, that is to say:

"SEPT. 3/04.

Recd. from Mr. L. C. Van Riper $150.00 cash—and checks for $670.00, $300.00, $220.00 respectively, paying all accts. in full to date.

F. A. PECKHAM."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, the said Frederick A. Peckham on the third day of September, in the year of our Lord one thousand nine hundred and four, did endorse the said check for the sum of six hundred and seventy dollars on the back thereof, the said endorsement being of the tenor following, that is to say: "F. A. Peckham," and did deliver the said last mentioned check to the said Edwin S. Holmes, Junior.

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, the said Edwin S. Holmes, Junior, on the fifteenth day of September, in the year of our Lord one thousand nine hundred and four, did endorse the
333 check last mentioned on the back thereof, the said endorsement being of the tenor following, that is to say, "E. S. Holmes, Jr.", and on the day and at the place last aforesaid did present the said check last mentioned to the Central National Bank of Washington City, and did receive in exchange therefor the sum of six hundred and seventy dollars in the national currency and money of the said United States.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present:

That in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, the said Frederick A. Peckham on the eighth day of September, in the year of our Lord one thousand nine hundred and four, did write and mail to the said Lewis C. Van Riper at the City of New York in the State of New York a letter of the tenor following, that is to say:

"WASHINGTON, D. C., 9 8, 1904.

Destroy.

V.

There will be a depreciation of 20 points in Spring Wheat on 10th—or from 87.5 (last report) to 67.5. Reduction may be more, not less. Such a great reduction will no doubt raise price 5 to 10¢ inside of 2 or 3 days.

This is best chance will have on wheat. Get in heavy.

F."

And that in further pur tance of the said unlawful con-
334 spiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, the said Frederick A. Peckham on the twenty-eighth day of September, in the year of our Lord one thousand nine hundred and four, did write and send by telegraph to the said Lewis C. Van Riper at the City of New York in the State of New York a telegram of the tenor following, that is to say:

"WASH'N D. C., *Sep.* 28.

L. C. Van Riper, 108 Fulton St., N. Y'k:

Nothing new since telephoning. Will not phone at nine morning unless something developes.

F."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, the said Frederick A. Peckham on the twenty-eighth day of September, in the year of our Lord one thousand nine hundred and four, did write and mail to the said Lewis C. Van Riper at the City of New York in the State of New York a letter of the tenor following, that is to say:

"TUESDAY, WASHINGTON, D. C., *Sept.* 28, 1904.

DEAR VAN: As stated over phone party went to B.—phoned N. Y. and evidently did not say anything definite as to movements—
but inference was that he was going to get in and buy. When
335 I said over phone—party thinks—only advised what Colonel inferred—Not intended as my "thinking." Regret cannot get it more definitely—and that program we were told about has not been, so far, carried out. From talks Col. has had with man he believes they will start to buy tomorrow if they did not today. Note prices have advanced a little. Remember that Mr. P. (in N. Y.) would not say over phone to Balt. things he would if talking face to face, hence my aim on phone, and in this, to give you as good an idea as we have as to plans.

No use phoning in A. M. So wired to night after talking with Col.—since talking to you on phone.

F."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, the said Frederick A. Peckham on the twenty-ninth day of September, in the year of our Lord one thousand nine hundred and four, did write and send by telegraph to the said Lewis C. Van Riper at the city of New York in the State of New York a telegram of the tenor following, that is to say:

"WASHINGTON, D. C., *Sept.* 29, 1904—1:30 P. M.

L. C. Van Riper, 108 Fulton Street, New York:

Will write fully late tonight special delivery.

FRED."

And that in further pursuance of said unlawful conspiracy,
336 combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, the said Frederick A. Peckham on the twenty-ninth day of September, in the year of our Lord one thousand nine hundred and four, did write and mail to the said Lewis C. Van Riper at the City of New York in the state of New York a letter of the tenor following, that is to say:

"9 P. M. Trying to get you on phone. This is since talking to you at 7.

L. C. V. R.

At 12 tonight party goes to N. Y. Before 8 a. m. tomorrow (Thursday) Price will be advised that drop will be 12 to 15 points: that is from 84.1. Also that Texas report from present data shows a drop from 76 to 49. Something remarkable. Col. padded matters, making very strong, information which P. will get tomorrow—so he will be *sure* to jump right in & buy. Also party will be put in for usual ten thousand. Deterioration promises to be big—very. Reports not all in, but important ones reed. All show above.

Please destroy at once. Col. says he will put up 50 points tomorrow sure—to get in early & heavy & get all back and more."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, the said Frederick
337 A. Peckham on the twenty-sixth day of September, in the year of our Lord one thousand nine hundred and four, did receive from the said Lewis C. Van Riper two checks of the tenor following, that is to say:

"No. A 1625. HOBOKEN, N. J., *Sept. 26th*, 1904.

The Second National Bank of Hoboken, Through New York Clearing House Association.

Pay to the order of F. A. Peckham One hundred & 00 100 Dollars.

$100 00 100.

LEWIS C. VAN RIPER."

"No. A 1626.

HOBOKEN, N. J., *Sept. 26th*, 1904.

The Second National Bank of Hoboken, Through New York Clearing House Association.

Pay to the order of F. A. Peckham One hundred & 00 100 Dollars.

$100 00 (Not over one hundred $1008.)

LEWIS C. VAN RIPER."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, the said Frederick A. Peckham at the District aforesaid, on the twenty-seventh day of September, in the year of our Lord one thousand nine hundred and four, did endorse said check bearing number A 1625 on the back thereof, said endorsement being of the tenor following,
338 that is to say, "F. A. Peckham," and did deliver the said check to the said Holmes.

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, the said Holmes, on the twenty-ninth day of September, in the year of our Lord one thousand nine hundred and four, did endorse said last mentioned check on the back thereof, said endorsement being of the tenor following, that is to say, "E. S. Holmes, Jr.," and did present the same to the Central National Bank of Washington City, and did receive in exchange therefor the sum of one hundred dollars in the national currency and money of the said United States.

And that in further pursuance, of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, the said Frederick A. Peckham at the District aforesaid on the twenty-seventh day of September, in the year of our Lord one thousand nine hundred and four, did endorse said check bearing number A 1625 on the back thereof, said endorsement being of the tenor following, that is to say, "F. A. Peckham," and did deliver the said check to the said Edwin S. Holmes, Junior.

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, the said Edwin S. Holmes, Junior, at the District aforesaid, on the first day of
339 October, in the year of our Lord one thousand nine hundred and four, did endorse said last mentioned check on the back thereof, said endorsement being of the tenor following, that is to say, "Signature of check O. K. E. S. Holmes, Jr.," and did present the said last mentioned check to the Central National Bank of Washington City, and did receive in exchange therefor the sum of one hundred dollars in the national currency and money of the said United States.

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, the said Frederick A. Peckham at the District aforesaid, did on the third day of October, in the year of our Lord one thousand nine hundred and four write and send by telegraph to the said Van Riper at the City of New York in the State of New York a telegram of the tenor following, that is to say:

"WASHINGTON, D. *D., Oct.* 3, 1904.

L. C. Vanriper, 108 Fulton Street, New York:

Successful bidder best contract ever had.

FRED."

And that in further pursuance *to* the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, the said Moses Haas on the twenty-fifth day of October, in the year of our Lord one thousand nine hundred and four did come to the District aforesaid and did there remain until the thirtieth day of the same month, for the purpose of receiving
340 from the said Edwin S. Holmes, Junior, facts, figures and information which were to be contained in the cotton crop report which was to be issued and published by the Department of Agriculture on or about the third day of December in the year of our Lord one thousand nine hundred and four.

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, the said Moses Haas, on the twenty-fifth day of November, at the District aforesaid, did give to the said Lewis C. Van Riper the sum of ten thousand dollars to be used by the latter in the purchase or sale of cotton before the publication of said report on or about said third day of December, in the year of our Lord one thousand nine hundred and four.

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, on the twentieth day of November, in the year of our Lord one thousand nine hundred and four, and on divers other days between the said last mentioned and the third day of December in the year of our Lord one thousand nine hundred and four, the said Edwin S. Holmes, Junior, and the said Frederick A. Peckham and the said Moses Haas did furnish to the said Lewis C. Van Riper facts, figures, and the information which were to be contained in the said cotton crop report which was to be issued and published on said last mentioned day.

And the said Grand Jurors aforesaid, on their oath
341 aforesaid, do further present

That the said Lewis C. Van Riper with the aid and guidance of said facts, figures and information so furnished to him by said Edwin S. Holmes, Junior, Frederick A. Peckham and Moses Haas as aforesaid, did on said twentieth day of November, in the year of our Lord one thousand nine hundred and four, and on divers other days between said last mentioned day and the third day of December, in the year of our Lord one thousand nine hundred and four, sell large quantities of cotton to be delivered in the month of March next following; that upon the said third day of December, in the year of our Lord one thousand nine hundred and four the cotton crop report for that month was officially approved by the Secretary of Agriculture and was issued and published; that after the issuance and publication of said report the market price of cotton to be delivered in the month of March next following greatly decreased, and the said Lewis C. Van Riper thereupon and at such decreased prices bought large quantities of cotton corresponding in amount to such quantities as theretofore sold by him, and that the said Lewis C. Van Riper did thereby make large gains and profits amounting in the aggregate to a large sum, to wit, to the sum of

two hundred and ten thousand two hundred and seventy-one dollars and sixty-two cents.

And that in further pursuance of the said unlawful
342 conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, the said Moses Haas on the twelfth day of December, in the year of our Lord one thousand nine hundred and four, did receive from the said Lewis C. Van Riper the sum of fourteen thousand two hundred and fifty dollars in the national currency and money of the said United States, and did on the day and at the place last aforesaid receive from the said Lewis C. Van Riper a check of the tenor following, that is to say:

"No. XXX. HOBOKEN, N. J., *Dec. 12th*, 1904.

The Second National Bank of Hoboken, Through the New York Clearing House Association.

Pay to M. Haas or order Twenty four thousand two hundred fifty Dollars.

$24250 00 . LEWIS C. VAN RIPER."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, on the day and at the place last aforesaid, the said Moses Haas did give to the said Edwin S. Holmes, Junior and the said Edwin S. Holmes, Junior did receive from the said Moses Haas the said sum of fourteen thousand two hundred and fifty dollars in the national currency and money of the said United States so received by the said Moses Haas from the said Lewis C. Van Riper.

343 And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid and on the thirtieth day of December, in the year of our Lord one thousand nine hundred and four, the said Moses Haas did receive from the said Lewis C. Van Riper the sum of ten thousand seven hundred and sixty seven dollars and ninety cents in the national currency and money of the said United States and a check of the tenor following, that is to say:

No. A 1788. HOBOKEN, N. J., *Dec. 30th*, 1904.

The Second National Bank of Hoboken, Through the New York Clearing House Association.

Pay to the order of M. Haas Twenty five hundred twenty-five 00 100 Dollars (Not over three thousand $3000 8)

$2525 00 .

LEWIS C. VAN RIPER."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect

the object thereof, and at the District aforesaid, and on the thirty-first day of December, in the year of our Lord one thousand nine hundred and four, the said Moses Haas did receive from the said Lewis C. Van Riper the sum of twenty-five thousand dollars in the national currency and money of the said United States, and a check of the tenor following, that is to say:

311 "No. A 1791. HOBOKEN, N. J., *Dec.* 31*st*, 1904.

The Second National Bank of Hoboken, through New York Clearing House Association,

Pay to the order of M. Haas, ($38,292.90) Thirty-eight thousand two hundred ninety-two & 90/100 Dollars.

$38,292.90. LEWIS C. VAN RIPER."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid and on the thirtieth day of December, in the year of our Lord one thousand nine hundred and four, the said Moses Haas did give to the said Edwin S. Holmes, Junior, and the said Edwin S. Holmes, Junior, did receive from the said Moses Haas the sum of ten thousand seven hundred and sixty-seven dollars and ninety cents in the national currency and money of the said United States.

And that in further pursuance of the said unlawful conspiracy, confederation and agreement, and to further effect the object thereof, at the District aforesaid, and on the thirty-first day of December, in the year of our Lord one thousand nine hundred and four, the said Moses Haas did give to the said Edwin S. Holmes, Junior and the said Edwin S. Holmes, Junior did receive from the said Moses Haas the sum of twenty-seven thousand and twenty-five dollars in the national currency and money of the said United States.

Against the form of the statute in such case made and provided, and against the peace and government of the said United
315 States.

MORGAN H. BEACH,
Attorney of the United States in and for the District of Columbia.

(Endorsed:) No. 24866. United States vs. Edwin S. Holmes, Junior, Frederick A. Peckham, and Moses Haas. Violation of Section 5440 R. S. U. S. as amended. Witnesses: Richard Cheatham, Wm. H. Moran, Wm. P. Walsh, Louis C. Van Riper, Wm. M. Judd, Frederick A. Peckham, Moses Haas, Victor H. Olmstead, Wm. P. McCabe, Chas. C. Clark, Louis H. Mercer, R. C. White, Steven D. Fessenden, James H. Blodgett, Harvey Jordan, James Wilson, H. W. Degranges, Samuel R. Baulsir. A true bill. Sam'l C. Smoot, Foreman.

346 *Authentication.*

Supreme Court of the District of Columbia.

I, John R. Young, Clerk of the said Court, do hereby certify that the *following* copy of indictment, annexed to this certificate, is a true copy of the original on file and of record in said office, and that said original indictment is pending in said Court as to Peckham and Haas.

Witness my hand and the seal of said Court, this 30 day of October 1908.

[L. S.] JOHN R. YOUNG, *Clerk.*

I Harry M. Clabaugh, Chief Justice of said Court, do certify the foregoing attestation by John R. Young, Clerk of the said Court, to be in due form.

Witness my hand and seal this 30th day of October, 1908.

HARRY M. CLABAUGH. [SEAL.]
Chief Justice.

I John R. Young, Clerk of said Court, hereby certify that the Honorable Harry M. Clabaugh, whose genuine signature is subscribed to the foregoing certificate, was, at the time of signing and attesting the same, Chief Justice of said Court, duly commissioned and qualified.

347 Witness my hand and the seal of said Court, this 30th day of October 1908.

[L. S.] JOHN R. YOUNG, *Clerk.*
By —— ——, *Ass't Clerk.*

348 24867.

In the Supreme Court of the District of Columbia.

TRANSCRIPT OF RECORD.

To All to Whom these presents come, Greeting:

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, among others, were the following proceedings, to wit:

349 *Indictment.*

Filed in Open Court, August 22, 1905. J. R. Young, Clerk.

In the Supreme Court of the District of Columbia, Holding a Criminal Term, April Term, A. D. 1905.

DISTRICT OF COLUMBIA, *ss:*

The Grand Jurors of the United States of America, in and for the District of Columbia, aforesaid, upon their oath, do present:

That in the administrative arrangement of the business of the Department of Agriculture of the said United States on and before the second day of June, in the year of our Lord one thousand nine hundred and four, there was, and thence hitherto there has been, a bureau designated and known as the Bureau of Statistics; and that during the time and times aforesaid the said Bureau was under the management of an officer and employee of the said United States and of the said Department of Agriculture designated and known as statistician and as chief of the Bureau of Statistics; and that during the time and times aforesaid there were in the said Bureau other officers and employees of the said United States and of the said Department of Agriculture, one of whom was designated and known as associate statistician and another of whom was designated and known as assistant statistician, and as assistant chief of the Bureau of Statistics; and that during the time and times aforesaid whenever the said statistician was absent from his said office, the said Bureau was under the management of the said
350 associate statistician, who acted in the place and stead of said statistician as chief of said Bureau.

And that during the time and times aforesaid the said statistician with the aid and assistance of the said associate statistician and of the other officers and employees of the said United States employed in said Bureau, and in the absence of the said statistician, the said associate statistician with the aid and assistance of the other officers and employees aforesaid of said Bureau, was charged with the duty of preparing during certain months in each year certain crop reports, and that each of said crop reports was by law required to embrace statements of the conditions of the crops therein mentioned by States of the said United States, with such explanations, comparisons and information as might be useful for illustrating the matter contained in said reports, and that each of such reports was required by law to be submitted to and officially approved by the Secretary of Agriculture before being issued or published; and that during the time and times aforesaid after the said statistician or the said associate statistician had in the manner aforesaid prepared any of said reports, he, the said statistician, or the said associate statistician, as the case might be, in accordance with the requirement of law last aforesaid submitted the said report so prepared to the Secretary of Agriculture for the latter's official approval; and

that whenever any of said reports was so submitted to said
351 Secretary of Agriculture for his official approval, he, the said Secretary of Agriculture, as a matter of course in the ordinary routine of his office, and relying upon the proper performance of their duties in the preparation of said report by the said statistician and the said associate statistician, officially approved the same; and that after such official approval by the said Secretary of Agriculture thereof, and not until such approval was given, each of said reports was issued and published by the said statistician or by the said associate statistician acting in his place and stead.

And that during the time and times aforesaid, the said crop reports were prepared, approved and issued and published for the purpose of diffusing the information therein contained among the people of the United States, and that said reports were intended to be as nearly fair, impartial, correct and accurate as it was possible for such reports to be; and the said reports and each of them upon their issuance and publication after being submitted to and officially approved by the Secretary of Agriculture as aforesaid, did affect to a greater or less extent the market price of the several crops mentioned therein.

And that during the time and times aforesaid the said statistician and the said associate statistician and the other officers and employees aforesaid of the said Bureau were charged with the duty of honestly and in good faith assisting in the preparation of the said reports and of carefully guarding and keeping secret and of not divulging to any person outside of said bureau any information acquired by
352 him or them in such preparation of said reports, until said reports had been prepared, officially approved, issued and published as aforesaid, and thereafter said duty of so maintaining secrecy as aforesaid continued save and except as to the matters and things so officially made public in said reports.

And that among the said crop reports so required by law to be prepared, approved, issued and published by the Department of Agriculture as aforesaid, was a report upon the condition of the cotton crop, which said cotton crop report during the time and times aforesaid was issued and published on or about the third day of each of the months of June, July, August, September, October and December, in each year.

That on the sixteenth day of November, in the year of our Lord one thousand nine hundred and three, and thence continuously until the ninth day of June, in the year of our Lord one thousand nine hundred and five, one Edwin S. Holmes, Junior, late of the District aforesaid, held and occupied the said office of associate statistician, and as such associate statistician was charged with the duties hereinbefore set forth; all and singular of which the premises and several premises aforesaid, in so far as they were then existent, were known to the said Edwin S. Holmes, Junior, and to a certain Frederick A. Peckham and to a certain Moses Haas, both late of the District aforesaid, at the time of the commission by them of the offense hereinafter set forth.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present:

That on the second day of June, in the year of our Lord one
353 thousand nine hundred and four, and at the District aforesaid, the said Edwoin S. Holmes, Junior, and said Frederick A. Peckham, and said Moses Haas, unlawfully did conspire, combine, confederate and agree together, to commit an offense against the said United States, that is to say, the offense of misconduct on the part of him, the said Edwin S. Holmes, Junior, in his said office of associate statistician, in the said Department of Agriculture, to be done and committed by him, the said Edwin S. Holmes, Junior, in the dishonest manner and through and by the means of the dishonest scheme and arrangement following, that is to say:

That they, the said Frederick A. Peckham, and the said Moses Haas should and would procure some other person or persons possessed of money who was not employed in or connected with said Bureau and who should and would, with the guidance and assistance or information to be furnished by the said Edwin S. Holmes, Junior, in contravention of his said duties as said associate statistician, and in violation of the confidence reposed in him by the said Secretary of Agriculture, engage in buying and selling cotton as hereinafter set forth; and that he, the said Edwin S. Holmes, Junior, should and would in so far as in him the power lay, some time in advance of the official issuance and publication of each of said cotton crop reports, and in contravention of his duties in the premises as such associate statistician, furnish to the said Frederick A. Peckham and to the said Moses Haas, or directly to such person or persons so to be procured by the said Frederick A. Peckham and the said Moses Haas, before
the official issuance and publication of each of said cotton crop
354 reports as hereinbefore set forth, and in advance of the time or times when the same could legally be made public, the facts and figures and other information which were to be contained in said report, and that the said Frederick A. Peckham and the said Moses Haas, whenever such information was so furnished to them or either of them should and would before the official issuance and publication of said report, communicate the said information to said person or persons so to be procured by them, the said Frederick A. Peckham and the said Moses Haas; and that thereupon the said person or persons so to be procured by the said Frederick A. Peckham and the said Moses Haas should and would, and before the official issuance and publication of said report, and with the aid and guidance of said information so furnished by the said Edwin S. Holmes, Junior, buy or sell cotton in large quantities, as the case might be, according as the market price of cotton might be affected in the one way or the other by the information contained in said report when the same should be officially approved by the Secretary of Agriculture and issued and published; and that after said report last mentioned had been so officially approved and issued and published, the said person or persons last mentioned should and would sell or buy, as the case might be, large quantities of cotton corresponding in amount to the quantities so bought or sold before the official issuance and publication of said report, and would thereby make large gains and
355 profits; and that such large gains and profits so made would thereafter be divided among such person or persons last afore-

said and the said Edwin S. Holmes, Junior, and the said Frederick A. Peckham and the said Moses Haas in proportions to be agreed upon by them.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present:

That in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object thereof, the said Frederick A. Peckham, at the District aforesaid on the sixth day of August in the year of our Lord one thousand nine hundred and four did write and send by telegraph to one Lewis C. Van Riper at the city of New York in the State of New York a telegram of the tenor following, that is to say:

"16. WASHINGTON, D. C., *Aug.* 6–'04.

L. C. Vanriper, Room 1001 No. 20, Broad St., N. Y.:

Come to Washington at once wire me Raleigh hotel time of arrival don't advise Mrs. P.

FRED. 1.19 M."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, the said Frederick A. Peckham on the seventh day of August, in the year of our Lord one thousand nine hundred and four, did meet the said Lewis C. Van Riper, who was not during the time and times aforesaid
356 employed in or connected with said Bureau, and did then and there cause the said Lewis C. Van Riper to meet the said Edwin S. Holmes, Junior.

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, and on the eighteenth day of August, in the year of our Lord one thousand nine hundred and four, the said Edwin S. Holmes, Junior, did write and mail to the said Lewis C. Van Riper at the city of New York in the State of New York a letter of the tenor following, that is to say:

"AUG. 18, '04.

DEAR MR. VAN RIPER: Other parties have changed plans slightly and I think it advisable for you to know about it.

Can't you come here Saturday night or Sunday? If not, I might be able to go to N. Y. Saturday afternoon. Write me on receipt of this, and, if you decide to come here, tell me when to meet you and where.

Yours, H."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, the said Edwin S. Holmes, Junior, on the twenty-first day of August, in the year of our Lord one thousand nine hundred and four did write and mail to

the said Lewis C. Van Riper at the city of New York in the
357 State of New York a letter of the tenor following, that is to say:

"AUG. 21, '04.

DEAR MR. VAN RIPER: Yours received. That matter can wait a few days. Better have P. come as I can't get away before Saturday afternoon.

Just getting over a bad chill. Hope to be O. K. to-morrow.

Yours, H.

You got my initials wrong on last letter."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, the said Edwin S. Holmes, Junior, on the thirtieth day of August, in the year of our Lord one thousand nine hundred and four, did write and mail to the said Lewis C. Van Riper at the city of New York, in the State of New York a letter of the tenor following, that is to say:

"AUG. 30, '04.

If you have bought any of that stuff sell it out at once, and *sell* as much as you can in addition. We are going to show very slight decline, and, as this is totally unexpected, it will send things down like fury.

Other parties will close out to-morrow, and sell on Thursday. Where is P?

Tear this up.

H.

358 It may go up a little before Friday but probably not."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, the said Frederick A. Peckham on the thirty-first day of August, in the year of our Lord one thousand nine hundred and four, did write and mail to the said Lewis C. Van Riper at the City of New York in the State of New York a letter of the tenor following, that is to say:

"WASHINGTON, D. C., *Aug.* 31, 1904.

L. C. Van Riper, Esq., 108 Fulton St., N. Y., City.

DEAR VAN: About 85. It will surprise everybody and cause big drop. Is opinion of best experts. There will be things doing *sure*. A drop of only (about) six points. This is one of the highest averages for this (Sept.) month ever known. Is way above the 10 year average. Tear this up. Do all you can.

F."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, the said Frederick A.

Peckham on the thirty-first day of August, in the year of our Lord one thousand nine hundred and four, did write and mail to the said Lewis C. Van Riper at the city of New York in the State of New York another letter of the tenor following, that is to say:

359 "WASHINGTON, D. C., 8/31, 1904.

10.30 P. M.

Letter No. 2.

Party for Price here tonight to make sure of figures. Tomorrow (Thursday) they are going to sell all they can without breaking market if they can. It may break tomorrow Saturday soon as report is out (perhaps before) they cut loose—selling everything in sight. Get in tomorrow early. *Be sure to close out Friday* as soon as effect of report has been shown.

No market Saturday (Holiday) & none Monday so I understand.

This is best chance we will have.

Destroy."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, the said Frederick A. Peckham and the said Edwin S. Holmes, Junior, by means of the letters hereinbefore set forth, and before the official issuance and publication of the cotton crop report in the month of September, in the year of our Lord one thousand nine hundred and four, so far as in the said Edwin S. Holmes, Junior, the power lay, did furnish to the said Lewis C. Van Riper the facts, figures and information to be contained in said cotton crop report so to be issued and published on or about the third day of September in said last mentioned year.

360 And the Grand Jurors aforesaid, upon their oath aforesaid, do further present, that the said Lewis C. Van Riper, with the guidance and assistance of the facts, figures and information so as last aforesaid furnished to him by the said Edwin S. Holmes, Junior, and by the said Frederick A. Peckham, did on the thirtieth day of August, in the year of our Lord one thousand nine hundred and four, and on divers other days between said last mentioned day and the second day of September in the same year, and before the official issuance and publication of the cotton crop report on said last mentioned day, sell large quantities of cotton at the prices then prevailing in the open market; and that on said last mentioned day the said cotton crop report was officially issued and published, and that after the said official issuance and publication of said last mentioned cotton crop report there was a decline in the market price of cotton; and that thereupon, and after such official issuance and publication of said last mentioned report and after said decline in the market price of cotton the said Lewis C. Van Riper bought large quantities of cotton corresponding in quantity with the amounts so theretofore sold by him and at prices lower than those at which he had so sold said cotton, and did thereby

make large gains and profits, to wit, gains and profits to the amount of twenty-six hundred and eighty dollars.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present:

That in further pursuance of the said unlawful con-
361 spiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, the said Frederick A. Peckham on the third day of September, in the year of our Lord one thousand nine hundred and four, did receive from the said Lewis C. Van Riper the sum of one hundred and fifth dollars in the national currency and money of the said United States, and three checks drawn by the said Lewis C. Van Riper to the order of said Frederick A. Peckham, one of said checks being for the sum of two hundred and twenty dollars and another of said checks being for the sum of three hundred dollars, and the third of said checks being for the sum of six hundred and seventy dollars, a more particular description of which said checks for the sums of two hundred and twenty dollars and three hundred dollars the Grand Jurors aforesaid are unable to give, and the said check for the sum of six hundred and seventy dollars being of the tenor following, that is to say:

"No. XXX. HOBOKEN, N. J., *Sept. 3rd*, 1904.

The Second National Bank of Hoboken, Through the New York Clearing House Association.

Pay to F. A. Peckham or order Six hundred seventy & no 100 Dollars.

$670. 00 100.

LEWIS C. VAN RIPER."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, the said
362 Frederick A. Peckham on the third day of September, in the year of our Lord one thousand nine hundred and four, did give to the said Lewis C. Van Riper a receipt of the tenor following, that is to say:

"SEPT. 3 04.

Recd. from Mr. L. C. Van Riper $150.00 cash—and checks for $670.00, $300.00, $220.00 respectively, paying all accts. in full to date.

F. A. PECKHAM."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, the said Frederick A. Peckham on the third day of September, in the year of our Lord one thousand nine hundred and four, did endorse the said check for the sum of six hundred and seventy dollars on the back thereof, the said endorsement being of the tenor following, that is to say:

"F. A. Peckham", and did deliver the said last mentioned check to the said Edwin S. Holmes, Junior.

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, the said Edwin S. Holmes, Junior, on the fifteenth day of September, in the year of our Lord one thousand nine hundred and four, did endorse the check last mentioned on the back thereof, the said endorsement being of the tenor following, that is to say, "E. S. Holmes, Jr.," and on the day and at the place last aforesaid did present the said
363 check last mentioned to the Central National Bank of Washington City, and did receive in exchange therefor the sum of six hundred and seventy dollars in the national currency and money of the said United States.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present:

That in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, the said Frederick A. Peckham on the eighth day of September, in the year of our Lord one thousand nine hundred and four, did write and mail to the said Lewis C. Van Riper at the city of New York in the State of New York a letter of the tenor following, that is to say:

"WASHINGTON, D. C., 9/8, 1904.

Destroy.

V.

There will be a depreciation of 20 points in Spring Wheat on 10th—or from 87.5 (last report) to 67.5. Reduction may be more, not less. Such a great reduction will no doubt raise price 5 to 10¢ inside of 2 or 3 days.

This is best chance will have on wheat. Get in heavy.

F."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, the said Frederick A. Peckham on the twenty-sixth day of September, in the
364 year of our Lord one thousand nine hundred and four, did write and mail to the said Lewis C. Van Riper at the city of New York in the State of New York a letter of the tenor following, that is to say:

"Long conference Sunday between Colonel and man. S. has done something P. does not like. Is going, without S. knowing it, if possible, to put price up high as possible before 1st. Then if figures show 79 say, or better, instead 81.4 as before, something will drop. Belief here is you can get it going and coming. P. going to break S. later, if he can.

Destroy sure."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, the said Frederick A. Peckham on the twenty-eighth day of September, in the year of our Lord one thousand nine hundred and four, did write and send by telegraph to the said Lewis C. Van Riper at the city of New York, in the State of New York, a telegram of the tenor following, that is to say:

"WASH'N, D. C., *Sep.* 28.

L. C. Van Riper, 108 Fulton St., N. Y'k:

Nothing new since telephoneing. Will not phone at nine morning unless something developes.

F."

365 And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, the said Frederick A. Peckham on the twenty-eighth day of September, in the year of our Lord one thousand nine hundred and four, did write and mail to the said Lewis C. Van Riper at the City of New York in the State of New York a letter of the tenor following, that is to say:

"TUESDAY, WASHINGTON, D. C., *Sept.* 28, 1904.

DEAR VAN: As stated over phone party went to B.—phoned. N. Y. end evidently did not say anything *definite* as to movements—but inference was that he was going to get in and buy. When I said over phone—party thinks—only advised that Colonel inferred—Not intended as my "thinking." Regret cannot get at it more definitely—and that program we were told about has not been, so far, carried out. From talks Col. has had with man he believes they will start to buy tomorrow if they did not today. Note prices have advanced a little. Remember that Mr. P. (in N. Y.) would not say over phone to Balt. things he would if talking face to face, hence my aim on phone, and in this, to give you as good an idea as we have as to plans.

No use phoning in A. M. So wired tonight after talking with Col.—since talking to you on phone.

F."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, the said Frederick 366 A. Peckham on the twenty-ninth day of September, in the year of our Lord one thousand nine hundred and four, did write and send by telegraph to the said Lewis C. Van Riper at the city of New York in the State of New York a telegram of the tenor following, that is to say:

WASHINGTON, D. C., *Sept.* 29, 1904—1:30 P. M.

L. C. Van Riper, 108 Fulton Street, New York:

Will write fully late tonight special delivery.

FRED."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, the said Frederick A. Peckham on the twenty-ninth day of September, in the year of our Lord one thousand nine hundred and four, did write and mail to the said Lewis C. Van Riper at the city of New York in the State of New York a letter of the tenor following, that is to say:

"9 P. M. Trying to get you on phone. This is since talking to you at 7.

L. C. V. R.

At 12 tonight party goes to N. Y. Before 8 a. m. tomorrow (Thursday) Price will be advised that drop will be 12 to 15 points—that is from 81.4. Also that Texas report from present data shows a drop from 76 to 49. Something remarkable. Col. padded matters, making very strong, information which P. will get tomorrow—so he will be *sure* to jump right in & buy. Also party will be put in for usual ten thousand. Deterioration promises to be
367 big—very. Reports not all in, but important ones rec'd. All show above.

Please destroy at once. Col. says he will put up 50 points tomorrow sure—to get in early & heavy & get all back & more."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, the said Frederick A. Peckham on the twenty-sixth day of September, in the year of our Lord one thousand nine hundred and four, did receive from the said Lewis C. Van Riper two checks of the tenor following, that is to say:

"No. A 1625. HOBOKEN, N. J., *Sept. 26th*, 1904.

The Second National Bank of Hoboken, Through New York Clearing House Association.

(Not over one hundred dollars.)

Pay to the order of F. A. Peckham One hundred & 00/100 Dollars.

$100 00/100 LEWIS C. VAN RIPER."

No. A 1626. HOBOKEN, N. J., *Sept. 26th*, 1904.

The Second National Bank of Hoboken, Through New York Clearing House Association.

(Not over one hundred dollars.)

Pay to the order of F. A. Peckham One Hundred & 00/100 Dollars.

$100 00 LEWIS C. VAN RIPER."

368 And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid,

the said Frederick A. Peckham, at the District aforesaid, on the twenty-seventh day of September, in the year of our Lord one thousand nine hundred and four, did endorse said check bearing number A 1626 on the back thereof, said endorsement being of the tenor following, that is to say, "F. A. Peckham," and did deliver the said check to the said Holmes.

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, the said Holmes, on the twenty-ninth day of September, in the year of our Lord one thousand nine hundred and four, did endorse said last mentioned check on the back thereof, said endorsement being of the tenor following, that is to say, "E. S. Holmes, Jr." and did present the same to the Central National Bank of Washington City, and did receive in exchange therefor the sum of one hundred dollars in the national currency and money of the said United States.

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, the said Frederick A. Peckham at the District aforesaid on the twenty-seventh day of September, in the year of our Lord one thousand nine hundred and four, did endorse said check bearing number A 1625 on the
369 back thereof, said endorsement being of the tenor following, that is to say, "F. A. Peckham," and did deliver the said check to the said Edwin S. Holmes, Junior.

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, the said Edwin S. Holmes, Junior, at the District aforesaid, on the first day of October, in the year of our Lord one thousand nine hundred and four, did endorse said last mentioned check on the back thereof, said endorsement being of the tenor following, that is to say, "Signature of check O. K. E. S. Holmes, Jr." and did present the said last mentioned check to the Central National Bank of Washington City, and did receive in exchange therefor the sum of one hundred dollars in the national currency and money of the said United States.

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, the said Frederick A. Peckham at the District aforesaid, did on the third day of October, in the year of our Lord one thousand nine hundred and four write and send by telegraph to the said Van Riper at the city of New York in the State of New York a telegram of the tenor following, that is to say:

"WASHINGTON, D. C., *Oct.* 3, 1904.

L. C. Van Riper, 108 Fulton Street, New York:

Successful bidder best contract ever had.

FRED."

370 And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to

further effect the object thereof, the said Moses Haas on the twenty-fifth day of October, in the year of our Lord one thousand nine hundred and four did come to the District aforesaid and did there remain until the thirtieth day of the same month, for the purpose of receiving from the said Edwin S. Holmes, Junior, facts, figures and information which were to be contained in the cotton crop report which was to be issued and published by the Department of Agriculture on or about the third day of December in the year of our Lord one thousand nine hundred and four.

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, the said Moses Haas, on the twenty-fifth day of November, at the District aforesaid, did give to the said Lewis C. Van Riper the sum of ten thousand dollars to be used by the latter in the purchase or sale of cotton before the publication of said report on or about said third day of December, in the year of our Lord one thousand nine hundred and four.

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, on the twentieth day of November, in the year of our Lord one thousand nine hun-
371 dred and four, and on divers other days between the said day last mentioned and the third day of December in the year of our Lord one thousand nine hundred and four, the said Edwin S. Holmes, Junior, and the said Frederick A. Peckham and the said Moses Haas did furnish to the said Lewis C. Van Riper facts, figures, and the information which were to be contained in the said cotton crop report which was to be issued and published on said last mentioned day.

And the Grand Jurors aforesaid, on their oath aforesaid, do further present:

That the said Lewis C. Van Riper with the aid and guidance of said facts, figures and information so furnished to him by said Edwin S. Holmes, Junior, Frederick A. Peckham and Moses Haas, as aforesaid, did on said twentieth day of November, in the year of our Lord one thousand nine hundred and four, and on divers other days between said last mentioned day and the third day of December, in the year of our Lord one thousand nine hundred and four, sell large quantities of cotton to be delivered in the month of March next following; that upon the said third day of December, in the year of our Lord one thousand nine hundred and four the cotton crop report for that month was officially approved by the Secretary of Agriculture and was issued and published; that after the issuance and publication of said report the market price of cotton to be delivered in the month of March next following greatly decreased, and the said Lewis
C. Van Riper thereupon and as such decreased prices bought
372 large quantities of cotton corresponding in amount to such quantities so theretofore sold by him, and that the said Lewis C. Van Riper did thereby make large gains and profits amounting in the aggregate to a large sum, to wit, to the sum of two hundred and ten thousand two hundred and seventy-one dollars and sixty-two cents.

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, the said Moses Haas on the twelfth day of December, in the year of our Lord one thousand nine hundred and four, did receive from the said Lewis C. Van Riper the sum of fourteen thousand two hundred and fifty dollars in the national currency and money of the said United States, and did on the day and at the place last aforesaid, receive from the said Lewis C. Van Riper a check of the tenor following, that is to say

"No. XXX. HOBOKEN, N. J., *Dec. 12th*, 1904.

The Second National Bank of Hoboken, Through the New York Clearing House Association.

Pay to M. Haas or order Twenty-four thousand two hundred fifty Dollars.

$24250.00

LEWIS C. VAN RIPER."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, on the day and at the place last aforesaid, the said Moses Haas did give to the said Edwin S. Holmes, Junior and the said Edwin S. Holmes, Junior, did receive from the said Moses
373 Haas the said sum of fourteen thousand two hundred and fifty dollars in the national currency and money of the said United States so received by the said Moses Haas from the said Lewis C. Van Riper.

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid and on the thirtieth day of December, in the year of our Lord one thousand nine hundred and four, the said Moses Haas did receive from the said Lewis C. Van Riper the sum of ten thousand seven hundred and sixty-seven dollars and ninety cents in the national currency and money of the said United States and a check of the tenor following, that is to say

"No. A 1788. HOBOKEN, N. J., *Dec. 30th*, 1904.

The Second National Bank of Hoboken, Through the New York Clearing House Association.

Pay to the order of M. Haas Twenty-five hundred twenty-five 00/100 Dollars.

$2525.00 (Not over Three Thousand $3000.)

LEWIS C. VAN RIPER."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, and on the thirty-first day of December, in the year of our Lord one thousand nine hundred

and four, the said Moses Haas did receive from the said Lewis C. Van Riper the sum of twenty-five thousand dollars in the national
374 currency and money of the said United States, and a check of the tenor following, that is to say:

"No. A 1791. HOBOKEN, N. J., *Dec.* 31*st*, 1904.

The Second National Bank of Hoboken, Through the New York Clearing House Association.

Pay to the order of M. Haas ($38,292.90) Thirty-eight thousand two hundred ninety-two & 90 100 Dollars.
$38,292.90

LEWIS C. VAN RIPER."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid and on the thirtieth day of December, in the year of our Lord one thousand nine hundred and four, the said Moses Haas did give to the said Edwin S. Holmes, Junior, and the said Edwin S. Holmes, Junior, did receive from the said Moses Haas the sum of ten thousand seven hundred and sixty-seven dollars and ninety cents in the national currency and money of the said United States.

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, at the District aforesaid and on the thirty-first day of December, in the year of our Lord one thousand nine hundred and four, the said Moses Haas did give to the said Edwin S. Holmes, Junior, and the said Edwin S. Holmes, Junior, did receive from the said Moses Haas the sum of twenty-seven thousand and twenty-five dollars in the national currency and money of the said United States.

375 Against the form of the statute in such case made and provided, and against the peace and government of the said United States.

MORGAN H. BEACH,
Attorney of the United States in and for the District of Columbia.

(Endorsed:) No. 24867. United States vs. Edwin S. Holmes, Junior, Frederick A. Peckham and Moses Haas. Violation of Section 5440 R. S. U. S. as Amended. Witnesses: Richard Cheatam, William H. Moran, Wm. P. Walsh, Louis C. Van Riper, William M. Judd, Frederick A. Peckham, Moses Haas, Victor H. Olmstead, Wm. P. McCabe, Chas. C. Clarke, Louis H. Mercer, B. C. White, Steven D. Fessenden, James H. Blodgett, Harvey Jordan, James Wilson, H. W. Desgranges, Samuel R. Baulsir. A true bill. Sam'l C. Smoot, Foreman.

376 *Authentication.*

Supreme Court of the District of Columbia.

I, John R. Young, Clerk of the said Court, do hereby certify that the following copy of indictment, annexed to this certificate, is a true copy of the original on file and of record in said office, and that said original indictment is pending in said Court as to Peckham and Haas.

Witness my hand and the seal of said Court, this 30th day of October, 1908.

[L. S.] JOHN R. YOUNG, *Clerk.*

I, Harry M. Clabaugh, Chief Justice of said Court, do certify the foregoing attestation by John R. Young, Clerk of the said Court, to be in due form.

Witness my hand and seal this 30 day of October, 1908.

HARRY M. CLABAUGH. [SEAL.]
Chief Justice.

I, John R. Young, Clerk of said Court, hereby certify that the Honorable Harry M. Clabaugh, whose genuine signature is subscribed to the foregoing certificate was, at the time of signing and attesting the same, Chief Justice of said Court, duly commissioned and qualified.

Witness my hand and the seal of said Court, this 30 day of October, 1908.

JOHN R. YOUNG, *Clerk.*

377 In the Supreme Court of the District of Columbia.

TRANSCRIPT OF RECORD.

To all to whom these presents come, Greeting:

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, among others, were the following proceedings, to wit:

378 No. 24907. United States vs. Edwin S. Holmes, Junior, Frederick A. Peckham and Moses Haas. Violation of Section 5440 R. S. U. S. as amended. Witnesses: Richard Cheatam, Wm. H. Moran, Wm. P. Walsh, Louis C. Van Riper, Wm. M. Judd, Victor H. Olmstead, Wm. F. McCabe, Charles V. Clark, Louis H. Mercer, B. C. White, Stephen D. Fessenden, James H. Blodgett, Harvey Jordan, James Wilson, E. W. Desgranges, Samuel R. Baulsir, ... true bill. Sam'l C. Smoot, Foreman.

379 Filed in Open Court Aug. 22, 1905. J. R. Young, Clerk.

In the Supreme Court of the District of Columbia, Holding a Criminal Term, April Term, A. D. 1905.

DISTRICT OF COLUMBIA, *ss:*

The Grand Jurors of the United States of America, in and for the District of Columbia aforesaid, upon their oath, do present:

That in the administrative arrangement of the business of the Department of Agriculture of the said United States on and before the second day of June, in the year of our Lord one thousand nine hundred and four, there was, and thence hitherto there has been, a bureau designated and known as the Bureau of Statistics; and that during the time and times aforesaid the said Bureau was under the management of an officer and employee of the said United States and of the said Department of Agriculture designated and known as statistician and as chief of the Bureau of Statistics; and that during the time and times aforesaid there were in the said Bureau other officers and employees of the said United States and of the said Department of Agriculture, one of whom was designated and known as associate statistician and another of whom was designated and known as assistant statistician and as assistant chief of the Bureau of Statistics; and that during the time and times aforesaid whenever the said statistician was absent from his said office, the said Bureau was under the management of the said associate statistician, who

380 acted in the place and stead of said statistician as chief of said Bureau.

And that during the time and times aforesaid the said statistician with the aid and assistance of the said assoc- ——-istician, who acted in the place and stead of said statistician as chief of said Bureau.

And that during the time and times aforesaid the said statistician with the aid and assistance of the said associate statistician and of the other officers and employees of the said United States employed in said Bureau, and in the absence of the said statistician, the said associate statistician with the aid and assistance of the other officers and employees aforesaid of said Bureau, was charged with the duty of preparing during certain months of each year certain reports upon the conditions of certain of the crops grown and raised in the United States, which reports became known as and were called crop reports, and that each of said crop reports was by law required to embrace statements of the conditions of the crops therein mentioned by States of the said United States, with such explanations, comparisons and information as might be useful for illustrating the matter contained in said reports, and that each of such reports was required by law to be submitted to and officially approved by the Secretary of Agriculture before being issued or published; and that during the time and times aforesaid whenever the said statistician or the said associate statistician had as aforesaid prepared any

381 of said reports, he, the said statistician, or the said associate statistician, as the case might be, in accordance with the requirement of law last aforesaid submitted the said report so pre-

pared to the Secretary of Agriculture for the latter's official approval; and that whenever any of said reports was so submitted to said Secretary of Agriculture for his official approval, he, the said Secretary of Agriculture, in the usual course of business in his said Department, and relying upon the proper performance of his duty in the preparation of said report by the said statistician or by the said associate statistician as the case might be, officially approved the same; and that after such official approval by the said Secretary of Agriculture thereof, and not until such approval was given, each of said reports was issued and published by the said Department of Agriculture.

And that during the time and times aforesaid, the said crop reports were prepared, approved, and issued and published for the purpose of diffusing the information therein contained among the people of the United States, and that said crop reports were prepared at great expense to the said United States and were intended to be as nearly fair, impartial, correct and accurate as it was possible for such reports to be; and the said crop reports and each of them upon their issuance and publication after being submitted to and officially approved by the Secretary of Agriculture as
382 aforesaid, did affect to a greater or less extent the market price of the several crops mentioned therein.

And that during the time and times aforesaid the said statistician and the said associate statistician and the other officers and employees aforesaid of the said Bureau of Statistics were charged with the duty of honestly and carefully guarding and keeping secret and of not divulging to any person not employed in or connected with the said Bureau of Statistics any information acquired by him or them in the course of preparing and assisting in preparing the said crop reports and in collecting statistics and compiling statistical matter for use in the preparation of said crop reports, or any of the matter and things and other information which might be contained in any of said crop reports, until said crop reports had been prepared, officially approved, and issued and published, as aforesaid, and thereafter said duty of so maintaining secrecy as aforesaid continued save and except as to the matters and things so officially made public in said reports.

And that among the said crop reports so prepared by the said statistician with the aid and assistance of said associate statistician and said other officers and employees of the said Bureau of Statistics, and, in the absence of said statistician, so prepared by the
383 said associate statistician with the aid and assistance of said other officers and employés of the said Bureau of Statistics as aforesaid, and so submitted to and officially approved by the said Secretary of Agriculture, and so issued and published by the Department of Agriculture as aforesaid, was a report upon the condition of the cotton crop of the United States, which became known as and was called the cotton crop report, and which said cotton crop report during the time and times aforesaid was issued and published on or about the third day of each of the months of June, July, August, September, October and December in each year;

That on the sixteenth day of November in the year of our Lord one thousand nine hundred and three, and thence continuously until the ninth day of June, in the year of our Lord one thousand nine hundred and five, one Edwin S. Holmes, Junior, held and occupied the office of, and was, such associate statistician in said Bureau of Statistics in the Department of Agriculture, and as such associate statistician the said Edwin S. Holmes, Junior, was during the period last aforesaid charged with the duty of aiding and assisting the said statistician in the preparation of said crop reports including said cotton crop reports, and, in the absence of the said statistician from his office, the said Edwin S. Holmes, Junior, as such associate statistician, was during the period last aforesaid charged with the duty of preparing with the aid and assistance of said
384 other officers and employes of said Bureau as aforesaid all of the said crop reports including the said cotton crop reports as aforesaid, and that during the period last aforesaid, in the performance of his duties as said associate statistician in assisting the said statistician in the preparation of said crop reports including said cotton crop reports, and, in the absence of the said statistician from his office, in the performance of his duties in preparing said crop reports, including the said cotton crop reports, he, the said Edwin S. Holmes, did, before the official approval and issuance and publication of each of said crop reports, including the said cotton crop reports, acquire and have knowledge of the statistics and statistical *matter* from which said crop reports, including said cotton crop reports, were prepared and of the matters and things and other information which were to be contained in each of said crop reports including said cotton crop reports.

And that during the period last aforesaid, it was the duty of the said Edwin S. Holmes, Junior, as such associate statistician to honestly and carefully guard and keep secret and not to divulge to any person not employed in or connected with said Bureau of Statistics any of the said statistics and statistical matter from which said crop reports including said cotton crop reports were to be prepared, and of the matters and things and other information which were to be contained in any of said crop reports, including said cotton crop reports, knowledge of which was so as aforesaid
385 acquired by him the said Edwin S. Holmes, Junior, as such associate statistician, until the said reports had been prepared, officially approved and issued and published as aforesaid, and it was the duty of the said Edwin S. Holmes, Junior as said associate statistician, to thereafter honestly and carefully guard and keep secret and not divulge to any person not employed in or connected with said Bureau any of the statistics and statistical matter *and* matters and things and other information last aforesaid, knowledge of which was so as aforesaid acquired by him except such matters and things and other information as were included in and officially made public in said reports.

All and singular of which the premises and several premises aforesaid, in so far as they were then existent, were known to the said Edwin S. Holmes, Junior, and to a certain Frederick A. Peckham,

and to a certain Moses Haas, at the time of the commission by them of the offense hereinafter set forth.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present:

That on the second day of June in the year of our Lord one thousand nine hundred and four, and at the District aforesaid, the said Edwin S. Holmes, Junior, and the said Frederick A. Peckham, and the said Moses Haas, all late of the District aforesaid, the said Frederick A. Peckham and the said Moses Haas not being then and there employed in or connected with the said Bureau of
386 statistics, unlawfully did conspire, combine, confederate and agree together, to commit an offense against the said United States, that is to say, the offense of misconduct on the part of him, the said Edwin S. Holmes, Junior, in his said office of associate statistician in the said Department of Agriculture, to be done and committed by him the said Edwin S. Holmes, Junior, in the dishonest manner and through and by means of the dishonest scheme and arrangement following, that is to say:

That in violation of the said duty of him the said Edwin S. Holmes, Junior, as said associate statistician to honestly and carefully guard and keep secret all statistics and statistical matter and matters and things and other information knowledge of which was so as aforesaid acquired by him as such associate statistician, in preparing and in assisting in preparing the said cotton crop reports in the manner as aforesaid, and in advance of the official issuance and publication of each of said cotton crop reports as hereinbefore set forth, and in advance of the time or times when the matters and things and other information contained in each of said cotton crop reports could lawfully be made public, and to prevent, obstruct and impair the orderly and due administration of the business and affairs of said Department of Agriculture, and to advance the pecuniary interests of them the said Edwin S. Holmes, Junior, and the said Frederick A. Peckham and the said Moses Haas, and to the prejudice of the said United States, he, the said Edwin S.
387 Holmes, Junior, should and would in so far as in him the power lay furnish the statistics and statistical matter and matters and things and other information knowledge of which was so as aforesaid acquired by him the said Edwin S. Holmes, Junior, as such associate statistician in preparing and assisting in preparing each of said cotton crop reports, to the said Frederick A. Peckham and to the said Moses Haas, and to either of them, and to any other person or persons possessed of money and not employed in or connected with said Bureau of Statistics who should be procured by the said Peckham or the said Haas or by either of them, in the manner and for the purpose hereinafter set forth; and that said Frederick A. Peckham and said Moses Haas, or either of them, whenever such information should be so as aforesaid furnished to them, or either of them, by the said Edwin S. Holmes, Junior, should and would make such use of the said information so furnished to them or either of them as would in the judgment of them or either of them advance the pecuniary interests of them the said Edwin S. Holmes, Junior, and the said Frederick A. Peckham and the said

Moses Haas, and that said Frederick A. Peckham and said Moses Haas, or either of them, should and would, with the guidance and assistance of such information so to be furnished by the said Edwin S. Holmes, Junior, engage in buying and selling cotton as hereinafter set forth; and that they the said Edwin S. Holmes, Junior and the said Frederick A. Peckham and the said Moses Haas should and would procure some other person or persons
388 possessed of money and not employed in or connected with said Bureau of Statistics to whom the said Frederick A. Peckham and the said Moses Haas, or either of them whenever such information should be so furnished to them or either of them by the said Edwin S. Holmes, Junior, and before the official issuance and publication of each of said cotton crop reports should and would communicate the said information so as aforesaid furnished by the said Edwin S. Holmes, Junior, to said person or persons so to be procured as aforesaid who should and would engage in buying and selling cotton as hereinafter set forth; and that whenever such informations should be by or through the said Edwin S. Holmes, Junior, in violation of his said duty as aforesaid, furnished to the said Frederick A. Peckham and the said Moses Haas, and to the said person or persons so to be procured as aforesaid, or either of them, and before the official issuance and publication of any one of said cotton reports, and with the guidance and assistance of such information so to be furnished as aforesaid, if they, the said Edwin S. Holmes, Junior, and Frederick A. Peckham and Moses Haas and said person or persons to be procured as aforesaid, or either of them, should believe that the said cotton crop report last mentioned when the same should be officially issued and published would cause the market price of cotton to increase, that they, the said Frederick A. Peckham and the said Moses Haas and said person or persons to be procured as aforesaid, or either of them, should and would buy large quantities of cotton; and that after the said cotton crop
389 report last mentioned had been issued and published and the market price of cotton had increased, that they, the said Frederick A. Peckham and said Moses Haas and said person or persons to be procured as aforesaid or such of them as had so bought cotton, should and would sell at such increased price the cotton so theretofore bought by them or him, and would thereby make large gains and profits; but if they the said Edwin S. Holmes, Junior and said Frederick A. Peckham and said Haas and said person or persons to be procured as aforesaid, or either of them, should believe that the said cotton crop report last mentioned when the same should be officially issued and published would cause the market price of cotton to decrease, that they, the said Peckham and the said Haas and said person or persons to be procured as aforesaid should and would sell large quantities of cotton, and that after the said cotton crop report last mentioned had been issued and published and the market price of cotton had decreased, that they, the said Frederick A. Peckham and said Moses Haas and said person or persons to be procured as aforesaid or such of them as had so sold cotton, should and would buy at such decreased price large quantities of cotton equal in amount to the quantities so sold by them or him, and

would thereby make large gains and profits; and that all of such large gains and profits so made as aforesaid would thereafter be divided among such person or persons to be procured as aforesaid and the said Edwin S. Holmes, Junior, and said
390 Frederick A. Peckham and said Moses Haas in certain proportions to be agreed upon by them.

And the Grand Jurors aforesaid upon their oath aforesaid, do further present:

That in pursuance of the said unlawful conspiracy, combination, confederation and agreement and to effect the object thereof, the said Frederick A. Peckham, on to wit, the third day of August, A. D. one thousand nine hundred and four, and, to wit, at the District aforesaid, did procure one Lewis C. Van Riper, who was then and there a person possessed of money, and who was not then and there employed in or connected with the said Bureau of Statistics, to buy and sell cotton in the manner hereinbefore described, with the guidance and assistance of said information to be furnished to him, the said Lewis C. Van Riper, by the said Edwin S. Holmes, Junior, in the manner and at the times as hereinbefore set forth.

That in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object thereof, the said Frederick A. Peckham at to wit the District aforesaid on the sixth day of August, in the year of our Lord one thousand nine hundred and four did write and send by telegraph to the said Lewis C. Van Riper at the city of New York in the State of New York a telegram of the tenor following, that is to say:

"16 Washington, D. C., *Aug.* 6-04.

L. C. Van Riper, Room 1001, No. 20 Broad St., N. Y.

391 Come to Washington at once wire me Raleigh hotel time of arrival don't advise Mrs. P.

FRED. 1:19 p. m."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and to wit at the District aforesaid, the said Frederick A. Peckham on the seventh day of August, in the year of our Lord one thousand nine hundred and four, did meet the said Lewis C. Van Riper, and did then and there cause the said Lewis C. Van Riper to meet the said Edwin S. Holmes, Junior.

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and to wit at the District aforesaid, and on the eighteenth day of August, in the year of our Lord one thousand nine hundred and four, the said Edwin S. Holmes, Junior, did write and mail to the said Lewis C. Van Riper at the city of New York in the State of New York a letter of the tenor following, that is to say:

"Aug. 18, 1904.

Dear Mr. Van Riper:

Other parties have changed plans slightly and I think it advisable for you to know about it.

Can't you come here Saturday night or Sunday? If not, I might be able to go to N. Y. Saturday afternoon. Write me on receipt of this and, if you decide to come here, tell me when to meet you and where.

392 Yours,

H."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and to wit at the District aforesaid, the said Edwin S. Holmes, Junior, on the twenty-first day of August, in the year of our Lord one thousand nine hundred and four did write and mail to the said Lewis C. Van Riper at the city of New York in the State of New York a letter of the tenor following, that is to say:

"Aug. 21, '04.

Dear Mr. Van Riper:

Yours received. That matter can wait a few days. Better have P. come as I can't get away before Saturday afternoon.

Just getting over a bad chill. Hope to be O. K. tomorrow.

Yours,

H

You got my initials wrong on last letter."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and to wit at the District aforesaid, the said Edwin S. Holmes, Junior, on the thirtieth day of August, in the year of our Lord one thousand nine hundred and four, did write and mail to the said Lewis C. Van Riper at the city of New York in the State of New York a letter of the tenor following, that is to say:

393 "August 30, '04.

If you have bought any of that stuff sell it out at once, and *sell* as much as you can in addition. We are going to show very slight decline, and, as this is totally unexpected, it will send things down like fury.

Other parties will close out tomorrow, and sell on Thursday. Where is P?

Tear this up.

H.

It may go up a little before Friday but probably not."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof and to wit at the District aforesaid, the said Frederick A. Peckham on the thirty-first day of August, in the year of our Lord one thousand nine hundred and four, did write and mail to the said Lewis C. Van Riper at the city of New York in the State of New York a letter of the tenor following, that is to say:

"WASHINGTON, D. C., *Aug.* 31, 1904.

L. C. Van Riper, Esq., 108 Fulton St., N. Y. City:

DEAR VAN: About 85. It will surprise everybody and cause big drop—is opinion of best experts. There will be things doing sure. A drop of only (about) six points. This is one of the highest
394 averages for this (Sept.) month ever known. Is way above the 10 year average. Tear this up. Do all you can.

F."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and to wit at the District aforesaid, the said Frederick A. Peckham on the thirty-first day of August, in the year of our Lord one thousand nine hundred and four, did write and mail to the said Lewis C. Van Riper at the city of New York in the State of New York another letter of the tenor following, that is to say:

"WASHINGTON, D. C., S. 31, 1904.

10:30 P. M.
Letter No. 2.

Party for Price here tonight to make sure of figures. Tomorrow (Thursday) they are going to sell all they can without breaking market if they can. It may break tomorrow Saturday soon as report is out (parties before) they cut loose—selling everything in sight. Get in tomorrow early. *Be sure to close out Friday as soon as effect of report has been shown.*

No market Saturday (Holiday) & none Monday so I understand. This is best chance we will have.

Destroy."

395 And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and to wit at the District aforesaid, the said Frederick A. Peckham and the said Edwin S. Holmes, Junior, by the means hereinbefore set forth, and before the official issuance and publication of the cotton crop report in the month of September, in the year of our Lord one thousand nine hundred and four, so far as in the said Edwin S. Holmes Junior, the power lay, did furnish to the said Lewis C. Van Riper the matters and things and other information to be contained in said cotton crop report so to be issued and published on or about the third day of September in said last mentioned year.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present, that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement and to further effect the object thereof, and to wit at the District aforesaid, the said Lewis C. Van Riper, with the guidance and assistance of the matters and things and other information so as last aforesaid furnished to him by the said Edwin S. Holmes, Junior, and by the said Frederick A. Peckham, did on the thirtieth day of August, in the year of our Lord, one thousand nine hundred and four, and on divers other days

between said last mentioned day and the second day of September in the same year, and before the official issuance and publication of the cotton crop report on said last mentioned day, sell large quan-
396 tities of cotton at the prices then prevailing in the open market; and that on said last mentioned day the said cotton crop report was officially issued and published, and that after the said official issuance and publication of said last mentioned cotton crop report there was a decline in the market price of cotton, and that thereupon, and after such official issuance and publication of said last mentioned report and after said decline in the market price of cotton the said Lewis C. Van Riper bought large quantities of cotton corresponding in quantity with the amounts so theretofore sold by him and at prices lower than those at which he had so sold said cotton, and did thereby make large gains and profits, to wit, gains and profits to the amount of twenty-six hundred and eighty dollars.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present:

That in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and to wit at the District aforesaid, the said Frederick A. Peckham on the third day of September, in the year of our Lord one thousand nine hundred and four, did receive from the said Lewis C. Van Riper the sum of one hundred and fifty dollars in the national currency and money of the said United States, and three checks drawn by the said Lewis C. Van Riper to the order of said Frederick A. Peckham one of said checks being for the sum of two hundred and twenty dollars, and another of said
397 checks being for the sum of three hundred dollars, and the third of said checks being for the sum of six hundred and seventy dollars, a more particular description of which said checks for the sum of two hundred and twenty dollars and three hundred dollars the Grand Jurors aforesaid are unable to give, and the said check for the sum of six hundred and seventy dollars being of the tenor following, that is to say:

"No. XXX HOBOKEN, N. J., *Sept. 3rd*, 1904.

The Second National Bank of Hoboken, Through the New York Clearing House Association.

Pay to F. A. Peckham or order Six hundred seventy & no 100 Dollars

$670.00 100. LEWIS C. VAN RIPER."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and to wit at the District aforesaid, the said Frederick A. Peckham on the third day of September, in the year of our Lord one thousand nine hundred and four, did give to the said Lewis C. Van Riper a receipt of the tenor following, that is to say:

"SEP. 3 '04.

Recd. from Mr. L. C. Van Riper $150.00 cash—and checks for $670.00, $300.00, $220.00, respectively, paying all accts. in full to date.

F. A. PECKHAM."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and to wit at the District aforesaid, the said
398 Frederick A. Peckham on the third day of September, in the year of our Lord one thousand nine hundred and four, did endorse the said check for the sum of six hundred and seventy dollars on the back thereof, the said endorsement being of the tenor following, that is to say: "F. A. Peckham," and did deliver the said last mentioned check to the said Edwin S. Holmes, Junior.

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and to wit at the District aforesaid, the said Edwin S. Holmes, Junior, on the fifteenth day of September, in the year of our Lord one thousand nine hundred and four, did endorse the check last mentioned on the back thereof, the said endorsement being of the tenor following, that is to say: "E. S. Holmes, Jr.," and on the day and at the place last aforesaid did present the said check last mentioned to the Central National Bank of Washington City, and did receive in exchange therefor the sum of six hundred and seventy dollars in the national currency and money of the said United States.

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and to wit at the District aforesaid, the said Frederick A. Peckham on the twenty-sixth day of September, in the year of our Lord one thousand nine hundred and four, did write and mail to
the said Lewis C. Van Riper at the city of New York in the
399 State of New York a letter of the tenor following, that is to say:

"Long conference Sunday between Colonel and man. S. has done something P. does not like. Is going, without S. knowing it, if possible, to put price up high as possible before 1-t. Then if figures show 79 say, or better, instead of 81.4 as before, something will drop. Belief here is you can get it going and coming. P. going to break S. later, if he can.

Destroy Sure."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at to wit the District aforesaid, the said Frederick A. Peckham on the twenty-eighth day of September, in the year of our Lord one thousand nine hundred and four, did write and send by telegraph to the said Lewis C. Van Riper at the City of New York, in the State of New York a telegram of the tenor following, that is to say:

"WASH'N, D. C., *Sep.* 28.

L. C. Van Riper, 108 Fulton *St.*, N. Y.:

Nothing now since telephoning. Will not phone at nine morning unless something developes.

F."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and to wit at the District aforesaid, the said Frederick A. Peckham on the twenty-eighth day of September,
400 in the year of our Lord one thousand nine hundred and four, did write and mail to the said Lewis C. Van Riper at the City of New York in the State of New York a Letter of the tenor following, that is to say:

"TUESDAY, WASHINGTON, D. C., *Sept* 28, 1904

DEAR VAN: As stated over the phone party went to B.—'Phoned N. Y. and evidently did not say anything *definite* as to movements—but inference was that he was going to get in and buy. When I said over 'phone party thinks—only advised what Colonel inferred—Not intended as my 'thinking.' Regret cannot get at it more definitely—and that program we were told about has not been, so far, carried out. From talks Col. has had with man he believes they wil start to buy tomorrow if they did not to-day. Note prices have advanced a little. Remember that Mr. P. (in N. Y.) would not say over phone to Balt. Things he would if talking face to face, hence my aim on 'phone, and in this, to give you as good an idea as we have as to plans.

No use phoning in A. M. So wired tonight after talking with Col.—since talking to you on phone.

F."

And that further in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and to wit at the District aforesaid, the said
401 Frederick A. Peckham on the twenty-ninth day of September, did write and send by telegraph to the said Lewis C. Van Riper at the city of New York in the State of New York a telegram of the tenor following, that is to say:

"WASHINGTON, D. C., *Sept.* 29, 1904—1:30 P. M.

L. C. Van Riper, 108 Fulton Street, New York

Will write fully late tonight special delivery.

FRED."

And that in further pursuance of the said unlawful conspiracy, combination confederation and agreement, and to further effect the object thereof, and to wit at the District aforesaid, the said Frederick A. Peckham on the twenty-ninth day of September, in the year of our Lord one thousand nine hundred and four, did write

and mail to the said Lewis C. Van Riper at the city of New York in the state of New York a letter of the tenor following, that is to say

"9 P. M. Trying to get you on phone. This is since talking to you at 7.

L. C. V. R.

At 12 tonight party goes to N. Y. Before 8 a. m. tomorrow (Thursday) Price will be advised that drop will be 12 to 15 points that is from 84.4. Also that Texas report from present data shows a drop of 76 to 79. Something remarkable. Cd. padded matters, making very strong information which P. will get tomorrow—so he will be *sure* to jump right in & buy. Also party will be put in for usual ten thousand. Deterioration promises to be big—very. Reports not all in, but important ones read, all show above.

402 Please destroy at once. Cd. says he will put up 50 points tomorrow sure—to get in early & heavy & get all back & more."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and to wit at the District aforesaid, the said Frederick A. Peckham on the twenty-sixth day of September, in the year of our Lord one thousand nine hundred and four, did receive from the said Lewis C. Van Riper two checks of the tenor following, that is to say:

"No. A 1625. HOBOKEN, N. J., *Sept. 26th*, 1904

The Second National Bank of Hoboken, Through New York Clearing House Association.

(Not over one hundred 100)

Pay to the order of F. A. Peckham One hundred & 00 100 dollars.
$100 00 LEWIS C. VAN RIPER"

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, the said Frederick A. Peckham to wit at the District aforesaid, on the twenty-seventh day of September, in the year of our Lord one thousand nine hundred and four, did endorse said check bearing number A 1626 on the back thereof said endorsement being of the tenor following, that is to say "F. A. Peckham," and did deliver the said check to the said Holmes

And that in further pursuance of the said unlawful conspiracy, combination, conspiracy and agreement, and to further
403 effect the object thereof, and to wit at the District aforesaid, the said Holmes, on the twenty ninth day of September, in the year of our Lord one thousand nine hundred and four, did endorse said last mentioned check on the back thereof, said endorsement being of the tenor following, that is to say, "E. S. Holmes, Jr." and did present the same to the Central National Bank of Washington City, and did receive in exchange therefor the sum of

one hundred dollars in the national currency and money of the said United States.

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, the said Frederick A. Peckham to wit at the District aforesaid on the twenty-seventh day of September, in the year of our Lord one thousand nine hundred and four, did endorse said check bearing number A 1625 on the back thereof, said endorsement being of the tenor following, that is to say, "F. A. Peckham," and did deliver the said check to the said Edwin S. Holmes, Junior.

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, the said Edwin S. Holmes Junior, to wit at the District aforesaid, on the first day of October, in the year of our Lord one thousand nine hundred and four, did endorse said last mentioned check on the back
404 thereof, said endorsement being of the tenor following, that is to say, "Signature of check O. K. E. S. Holmes, Jr." and did present the said last mentioned check to the Central National Bank of Washington City, and did receive in exchange therefor the sum of one hundred dollars in the national currency and money of the said United States.

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, the said Frederick A. Peckham to wit at the District aforesaid, did on the third day of October, in the year of our Lord one thousand nine hundred and four write and send by telegraph to the said Van Riper at the city of New York in the State of New York a telegram of the tenor following, that is to say

"WASHINGTON, D. C., *Oct.* 3, 1904.

L. C. Van Riper, 108 Fulton Street, New York.
Successful bidder best contract ever had.

FRED."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, the said Moses Haas on the twenty-fifth day of November, in the year of our Lord one thousand nine hundred and four did come to the District aforesaid and did there remain until the thirtieth day of the same month, for the purpose of learning from the said Edwin S. Holmes, Junior, matters and things and other informations which were to be contained in the cotton
405 crop report which was to be issued and published by the Department of Agriculture on or about the third day of December, in the year of our Lord one thousand nine hundred and four.

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and to wit at the District aforesaid, the said Moses Haas, on the twenty-fifth day of November, in the year last aforesaid,

did give to the said Lewis C. Van Riper the sum of ten thousand dollars to be used by the latter in the purchase or sale of cotton before the publication of said cotton crop report on or about said third day of December, in the year of our Lord one thousand nine hundred and four.

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and to wit at the District aforesaid, on the twentieth day of November, in the year of our Lord one thousand nine hundred and four, and on divers other days between the said day last mentioned and the third day of December in the year of our Lord one thousand nine hundred and four, the said Edwin S. Holmes, Junior, and the said Frederick A. Peckham and the said Moses Haas did furnish to the said Lewis C. Van Riper matters and things and other information which were to be contained in the said cotton crop report which was to be issued and published as aforesaid on said last mentioned day.

406 And the Grand Jurors aforesaid, upon their oath aforesaid do further present:

That the said Lewis C. Van Riper, with the aid and guidance of said matters and things and other information so furnished to him by said Edwin S. Holmes, Junior, Frederick A. Peckham and Moses Haas as aforesaid, and to wit at the District aforesaid, did on said twentieth day of November, in the year of our Lord one thousand nine hundred and four, and on divers other days between said last mentioned day and the third day of December, in the year of our Lord one thousand nine hundred and four sell large quantities of cotton to be delivered in the month of March next following; that upon the said third day of December, in the year of our Lord one thousand nine hundred and four the cotton crop report for that month was officially approved by the Secretary of Agriculture and was issued and published; that after the issuance and publication of said report the market price of cotton to be delivered in the month of March next following greatly decreased, and the said Lewis C. Van Riper thereupon at such decreased prices bought large quantities of cotton equal in amount to such quantities so theretofore sold by him, and that the said Lewis C. Van Riper did thereby make large gains and profits amounting in the aggregate to a large sum, to wit, to the sum of two hundred and ten thousand two hundred and seventy-one dollars and sixty-two cents.

407 And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and to wit at the District aforesaid, the said Moses Haas on the twelfth day of December — the year of our Lord one thousand nine hundred and four, did receive from the said Lewis C. Van Riper the sum of fourteen thousand two hundred and fifty dollars in the national currency and money of the said United States, and did on the day and at the place last aforesaid receive from the said Lewis C. Van Riper a check of the tenor following, that is to say

"No. XXX. HOBOKEN, N. J., *Dec. 12th*, 1904.

The Second National Bank of Hoboken, Through the New York Clearing House Association,

Pay to M. Haas or order Twenty-four thousand two hundred fifty Dollars.

$24250.00/ LEWIS C. VAN RIPER."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, on the day and at the place aforesaid, the said Moses Haas did give to the said Edwin S. Holmes, Junior, and the said Edwin S. Holmes, Junior, did receive from the said Moses Haas the said sum of fourteen thousand two hundred and fifty dollars in the national currency and money of the said United States so received by the said Moses Haas from the said Lewis C. Van Riper.

408 And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement and to further effect the object thereof, and to wit at the District aforesaid and on the thirtieth day of December, in the year of our Lord one thousand nine hundred and four, the said Moses Haas did receive from the said Lewis C. Van Riper the sum of ten thousand seven hundred and sixty-seven dollars and ninety cents in the national currency and money of the said United States and a check of the tenor following, that is to say:

"No. A 1788. HOBOKEN, N. J., *Dec. 30th*, 1904.

The Second National Bank of Hoboken, Through New York Clearing House Association,

Pay to the order of M. Haas Twenty-five hundred twenty-five 00/100 Dollars.

$2525.00. (Not over three thousand $3000.00.)

LEWIS C. VAN RIPER."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and to wit at the District aforesaid, and on the thirty-first day of December, in the year of our Lord one thousand nine hundred and four, the said Moses Haas did receive from the said Lewis C. Van Riper the sum of twenty-five thousand dollars in the national currency and money of the said United States, and a check of the tenor following, that is to say:

"No. A 1791. HOBOKEN, N. J., *Dec.* 31*st*, 1904.

409 The Second National Bank of Hoboken, Through New York Clearing House Association.

Pay to the order of M. Haas ($38,292.90) Thirty-eight thousand, two hundred ninety-two & 90 100 Dollars.
$38,292.90.

LEWIS C. VAN RIPER."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and to wit at the District aforesaid, and on the thirtieth day of December, in the year of our Lord one thousand nine hundred and four, the said Moses Haas did give to the said Edwin S. Holmes, Junior, and the said Edwin S. Holmes, Junior, did receive from the said Moses Haas the sum of ten thousand seven hundred and sixty-seven dollars and ninety cents in the national currency and money of the said United States.

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, at to wit, the District aforesaid and on the thirty-first day of December, in the year of our Lord one thousand nine hundred and four, the said Moses Haas did give to the said Edwin S. Holmes, Junior, and the said Edwin S. Holmes, Junior, did receive from the said Moses Haas the sum of twenty-seven thousand and twenty-five dollars in the national currency and money of the said United States.

Against the form of the statute in such case made and provided, and against the peace and government of the said United States.

410 *Second Count.*

And the Grand Jury aforesaid, upon their oath, do further present:

That in the administrative arrangement of the business of the Department of Agriculture of the said United States on and before the second day of June, in the year of our Lord one thousand nine hundred and four, there was, and thence hitherto there has been, a bureau designated and known as the Bureau of Statistics; and that during the time and times aforesaid the said Bureau was under the management of an officer and employee of the said United States and of the said Department of Agriculture designated and known as statistician and as chief of the Bureau of Statistics; and that during the time and times aforesaid there were in the said Bureau other officers and employees of the said United States and of the said Department of Agriculture, one of whom was designated and known as associate statistician and another of whom was designated and known as assistant statistician and as assistant chief of the Bureau of Statistics; and that during the time and times aforesaid,
411 whenever the said statistician was absent from his said office, the said bureau was under the management of the said asso-

ciate statistician, who acted in the place and stead of said statistician as chief of said bureau.

And that during the time and times aforesaid the said statistician with the aid and assistance of the said associate statistician and of the officers and employés of the said United States employed in said Bureau, and in the absence of the said statistician, the said associate statistician with the aid and assistance of the other officers and employés aforesaid of said Bureau, was charged with the duty of preparing during certain months in each year certain reports upon the conditions of certain of the crops grown and raised in the United States, which reports became known as and were called crop reports, and that each of said crop reports was by law required to embrace statements of the conditions of the crops therein mentioned by States of the said United States, with such explanations, comparisons and information as might be useful for illustrating the matter contained in said reports, and that each of such reports was required by law to be submitted to and officially approved by the Secretary of Agriculture before being issued or published, and that during the time and times aforesaid whenever the said statistician or the said associate statistician had as aforesaid prepared any of said reports, he, the said statistician, or the said associate statistician, as the case might be, in accordance with the requirement of law last aforesaid submitted the said report so prepared to the Secretary of Agriculture for the latter's official approval; and
412 that whenever any of said reports was so submitted to said Secretary of Agriculture for his official approval, he, the said Secretary of Agriculture, in the usual course of business in his said department, and relying upon the proper performance of his duty in the preparation of said report by the said statistician or by the said associate statistician, as the case might be, officially approved the same, and that after such official approval by the said Secretary of Agriculture thereof, and not until such approval was given, each of said reports was issued and published by the said Department of Agriculture.

And that during the time and times aforesaid, the said crop reports were prepared, approved, and issued and published for the purpose of diffusing the information therein contained among the people of the United States, and that said crop reports were prepared at great expense to the said United States and were intended to be as nearly fair, impartial, correct and accurate as it was possible for such reports to be; and the said crop reports and each of them upon their issuance and publication after being submitted to and officially approved by the Secretary of Agriculture as aforesaid, did affect to a greater or less extent the market price of the several crops mentioned therein.

And that during the time and times aforesaid the said statistician and the said associate statistician and the other officers and employés aforesaid of the said Bureau of Statistics were charged with the duty of honestly and carefully guarding and keeping secret and of not divulging to any person not employed in or connected with
413 said Bureau of Statistics any information acquired by him or them in the course of preparing and assisting in preparing

the said crops reports and in collecting statistics and compiling statistical matter for use in the preparation of said crop reports, or any of the matter and things and other information which might be contained in any of said crop reports, until said crop reports had been prepared, officially approved, and issued and published as aforesaid, and thereafter said duty of so maintaining secrecy as aforesaid continued save and except as to the matters and things so officially made public in said reports.

And that among the said crop reports so prepared by the said statistician with the aid and assistance of said associate statistician and of said other officers and employés of the said Bureau of Statistics, and, in the absence of said statistician, so prepared by the said associate statistician with the aid and assistance of said other officers and employés of the said Bureau of Statistics as aforesaid, and so submitted to and officially approved by the said Secretary of Agriculture, and so issued and published by the Department of Agriculture as aforesaid, was a report upon the condition of the cotton crop of the United States, which became known as and was called the cotton crop report, and which said cotton crop report during the time and times aforesaid was issued and published on or about the *the* third day of each of the months of June, July, August, September, October and December in each year.

That on the sixteenth day of November in the year of our Lord one thousand nine hundred and three, and thence continu-
114 ously until the ninth day of June in the year of our Lord one thousand nine hundred and five, one Edwin S. Holmes, Junior, held and occupied the office of, and was, such associate statistician in said Bureau of Statistics in the Department of Agriculture, and as such associate statistician the said Edwin S. Holmes, Junior, was during the period last aforesaid charged with the duty of aiding and assisting the said statistician in the preparation of said crop reports including said cotton crop reports, and in, the absence of the said statistician from his office, the said Edwin S. Holmes, Junior, as such associate statistician, was during the period last aforesaid charged with the duty of preparing with the aid and assistance of said other officers and employés of said Bureau as aforesaid all of the said crop reports including the said cotton crop reports as aforesaid, and that during the period last aforesaid, in the performance of his duties as said associate statistician in assisting the said statistician in the preparation of said crop reports including said cotton crop reports, and, in the absence of the said statistician from his office, in the performance of his duties in preparing said crop reports, including the said cotton crop reports, he, the said Edwin S. Holmes, Junior, did before the official approval and issuance and publication of each of said crop reports, including the said cotton crop reports, acquire and have knowledge of the statistics and statistical matter from which said crop reports, including said cotton crop reports, were prepared and of the matters and things and other information which were to be contained in each of said crop reports including said cotton crop reports.

115 And during the period last aforesaid it was the duty of the said Edwin S. Holmes, Junior, as such associate statis-

tician to honestly and carefully guard and keep secret and not to divulge to any person not employed in or connected with said Bureau of Statistics any of the said statistics and statistical matter from which said crop reports including said cotton crop reports were to be prepared, and of the matters and things and other information which were to be contained in any of said crop reports, knowledge of which was so as aforesaid acquired by him the said Edwin S. Holmes, Junior, as such associate statistician, until the said reports had been prepared, officially approved and issued and published as aforesaid, and it was the duty of the said Edwin S. Holmes, Junior, as said associate statistician, to thereafter honestly and carefully guard and keep secret and not divulge to any person not employed in or connected with said Bureau any of the statistics and statistical matter and matters and things and other information last aforesaid, knowledge of which was so as aforesaid acquired by him except such matters and things and other information as were included in and officially made public in said reports.

All and singular of which the premises and several premises last aforesaid, in so far as they were then existent, were known to the said Edwin S. Holmes, Junior, and to said Frederick A. Peckham and to said Moses Haas, at the time of the commission by them of the offense hereinafter set forth.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present:

That on the second day of June in the year of our Lord one thousand nine hundred and four, and at the District afore-
416 said, the said Edwin S. Holmes, Junior, and the said Frederick A. Peckham and the said Moses Haas, the said Frederick A. Peckham and the said Moses Haas not being then and there employed in or connected with said Bureau of Statistics, unlawfully did conspire, combine, confederate and agree together, to defraud the United States in the dishonest manner and through and by means of the dishonest scheme and arrangement following, that is to say:

That in violation of the said duty of him the said Edwin S. Holmes, Junior, as said associate statistician, to honestly and carefully guard and keep secret all statistics and statistical matter and matter and things and other information knowledge of which was so as aforesaid acquired by him as such associate statistician, in preparing and in assisting in preparing the said cotton crop reports in the manner aforesaid, and in advance of the official issuance and publication of each of said cotton-crop reports as hereinbefore set forth and in advance of the time or times when the matters and things and other information contained in each of said cotton reports could lawfully be made public, and to prevent, obstruct and impair the orderly and due administration of the business and affairs of said Department of Agriculture, and to advance the pecuniary interests of them, the said Edwin S. Holmes, Junior and the said Frederick A. Peckham and the said Moses Haas, and to the prejudice of the said United States, he the said Edwin S. Holmes, Junior, should and would in so far as in him the power lay furnish the statistics and statistical

matter and matters and things and other information knowl-
117 edge of which was so as aforesaid acquired by him, the said Edwin S. Holmes Junior as such associate statistician in preparing and assisting in preparing each of said cotton crop reports, to the said aFrederick A. Peckham and to the said Moses Haas, and to either of them and to any other person or persons possessed of money and not employed in or connected with said Bureau of Statistics who should be procured by the said Peckham or the said Haas or by either of them, in the manner and for the purpose hereinafter set forth; and that the said Frederick A. Peckham and said Moses Haas, or either of them, whenever such information should be so as aforesaid furnished to them, or either of them, by the said Edwin S. Holmes, Junior, should and would make such use of the said information so furnished to them or either of them as would in the judgment of them or either of them advance the pecuniary interests of them the said Edwin S. Holmes, Junior, and the said Frederick A. Peckham and the said Moses Haas, and that said Frederick A. Peckham and said Moses Haas or either of them should and would, with the guidance and assistance of such information so to be furnished by the said bEdwin S. Holmes, Junior, engage in buying and selling cotton as hereinafter set forth; and that they the said Edwin S. Holmes, Junior and the said Frederick A. Peckham and the said Moses Haas should and would procure some other person or persons possessed of money and not employed in or connected with said Bureau of Statistics to whom the said Frederick A. Peckham and the said Moses Haas or either of them whenever such information should be so furnished to them or either of them
118 by the said Edwin S. Holmes, Junior, and before the official issuance and publication of each of said cotton crop reports should and would communicate the said information so as aforesaid furnished by the said Edwin S. Holmes, Junior, to said person or persons so to be procured as aforesaid who should and would engage in buying and selling cotton as hereinafter set forth; and that whenever such information should be by or through the said Edwin S. Holmes, Junior, in violation of his said duty as aforesaid, furnished to the said Frederick A. Peckham and the said Moses Haas, and to the said person or persons so to be procured as aforesaid, or either of them, and before the official issuance and publication of any one of said cotton reports, and with the guidance and assistance of such information so to be furnished as aforesaid, if they, the said Edwin S. Holmes, Junior, and Frederick A. Peckham and Moses Haas and said person or persons to be procured as aforesaid, or either of them, should believe that the said cotton crop report last mentioned when the same should be officially issued and published would cause the market price of cotton to increase, they *they*, the said Frederick A. Peckham and the said Moses Haas and said person or persons to be procured as aforesaid, or either of them, should and would buy large quantities of cotton and that after the said cotton crop report last mentioned had been issued and published and the market price of cotton had increased, that they the said Frederick A. Peckham and said Moses Haas and said person or persons to be procured as aforesaid or such of them as had so bought cotton, should and

would sell at such increased price the cotton so theretofore
419 bought by them or him, and would thereby make large gains and profits; but if they, the said Edwin S. Holmes, Junior, and said Frederick A. Peckham and said Moses Haas and said person or persons to be procured as aforesaid, or either of them, should believe that the said cotton crop report last mentioned when the same should be officially issued and published would cause the market price of cotton to decrease, that they the said Peckham and the said Moses Haas and said person or persons to be procured as aforesaid, or either of them, should and would sell large quantities of cotton, and that after the said cotton crop report last mentioned had been issued and published and the market price of cotton had decreased, that they the said Frederick A. Peckham and said Moses Haas and said person or persons to be procured as aforesaid or such of them as had sold cotton, should and would buy at such decreased price large quantities of cotton equal in amount to the quantities so sold by them or him, and would thereby make large gains and profits; and that all of such large gains and profits so made as aforesaid would thereafter be divided among such person or persons to be procured as aforesaid and the said Edwin S. Holmes, Junior and said Frederick A. Peckham and said Moses Haas in certain proportions to be agreed upon by them.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present:

That in pursuance of the unlawful conspiracy, combination, confederation and agreement last aforesaid and to effect the object thereof, the said Frederick A. Peckham, on to wit, the third
420 day of August, A. D. one thousand nine hundred and four, and to wit, at the District aforesaid, did procure one Lewis C. Van Riper, who was then and there a person possessed of money, and who was not then and there employed in or connected with the said Bureau of Statistics, to buy and sell cotton in the manner hereinbefore described, with the guidance and assistance of said information to be furnished to him, the said Lewis C. Van Riper, by the said Edwin S. Holmes Junior, in the manner and at the time as hereinbefore set forth.

That in further pursuance of the said unlawful conspiracy, confederation and agreement last aforesaid, and to effect the object thereof, the said Frederick A. Peckham at to wit the District aforesaid on the sixth day of August in the year of our Lord one thousand nine hundred and four did write and send by telegraph to the said Lewis C. Van Riper at the City of New York in the States of New York a telegram of the tenor following, that is to say:

"16. WASHINGTON, D. C., *Aug.* 6 '04.

L. C. Van Riper, Room 1001 No. 20 Broad St., N. Y.

Come to Washington at once wire me Raleigh hotel time of arrival don't advise Mrs. P.

FRED. 1:49 P. M."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement last aforesaid, and to further effect the object thereof, and to wit at the District aforesaid, the said Frederick A. Peckham on the seventh day of August, in the year of our Lord one thousand nine hundred and four, did
421 meet the said Lewis C. Van Riper, and did then and there cause the said Lewis C. Van Riper to meet the said Edwin S. Holmes, Junior.

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement last aforesaid, and to further the object thereof, and to wit at the District aforesaid, and on the eighteenth day of August in the year of our Lord one thousand nine hundred and four, the said Edwin S. Holmes, Junior, did write and mail to the said Lewis C. Van Riper at the City of New York in the State of New York a letter of the tenor following, that is to say:

"AUG. 18, 1904.

DEAR MR. VAN RIPER: Other parties have changed plans slightly and I think it advisable for you to know about it.

Can't you come here Saturday night or Sunday? If not, I might be able to go to New York Saturday afternoon. Write me on receipt of this and, if you decide to come here, tell me when to meet you and where.

Yours, H."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement last aforesaid, and to further effect the object there, and to wit at the District aforesaid, the said Edwin S. Holmes, Junior, on the twenty-first day of August in the year of our Lord one thousand nine hundred and four did write and mail to the said Lewis C. Van Riper at the City of New York in the State of New York a letter of the tenor following that is to say:

422 "AUG. 21, '04.

DEAR MR. VAN RIPER: Yours received. That matter can wait a few days. Better have P. come as I cannot get away before Saturday afternoon.

Just getting over a bad chill. Hope to be O. K. to-morrow.

Yours, H."

You got my initials wrong on last letter."

That in further pursuance of the said unlawful conspiracy, combination, confederation and agreement last aforesaid and to further effect the object thereof, and to wit in the District Aforesaid, the said Edwin S. Holmes, Junior, on the thirteenth day of August in the year of our Lord one thousand nine hundred and four, did write and mail to the said Lewis C. Van Riper at the city of New York in the State of New York a letter of the tenor following, that is to say:

"AUG. 30, '04.

If you have bought any of that stuff sell it out at once, and *sell* as much as you can in addition. We are going to show very slight

decline, and, as this is totally unexpected, it will send things down like fury.

Other parties will close out to-morrow, and sell on Thursday. Where is P?

Tear this up.

H.

It may go up a little before Friday but probably not."

423 And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement last aforesaid, and to further effect the object thereof, and to wit, at the District aforesaid, the said Frederick A. Peckham on the thirty-first day of August in the year of our Lord one thousand nine hundred and four, did write and mail to the said Lewis C. Van Riper at the City of New York in the State of New York a letter of the tenor following, that is to say:

"WASHINGTON, D. C., *Aug.* 31, 1904.

L. C. Van Riper, Esq., 108 Fulton St., N. Y. City.

DEAR VAN: About 85. It will surprise every body and cause big drop—is opinion of best experts. There will be things doing sure. A drop of only (about) six points. This is one of the highest crop averages for this (Sept.) month ever known. Is way above the 10 year average. Tear this up. Do all you can.

F."

And in further pursuance of the said unlawful conspiracy, combination, confederation and agreement last aforesaid, and to further effect the object thereof, and to wit at the District aforesaid, the said Frederick A. Peckham on the thirty-first day of August, in the year of our Lord One thousand nine hundred and four, did write and mail to the said Lewis C. Van Riper at the City of New York in the State of New York another letter of the tenor following, that is to say:

424 "WASHINGTON, D. C., S. 31, 1904.

10.30 p. m.
Letter No. 2.

Party for Price here to-night to make sure of figures. Tomorrow (Thursday) they are going to sell all they can without breaking market if they can. It may break to-morrow Saturday as soon as market is out (perhaps before) they cut loose—selling everything in sight. Get in tomorrow early. Be sure to close out Friday as soon as effect of report has been shown.

No market Saturday (Holiday) & none Monday so I make. This is best chance we will have.

Destroy."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement last aforesaid, and to further effect the object thereof, and to wit at the District aforesaid, the said Frederick A. Peckham and the said Edwin S. Holmes, Junior,

by the means of the letters hereinbefore in this count set forth, and before the official issuance and publication of the cotton crop report in the month of September, in the year of our Lord one thousand nine hundred and four, so far as in the said Edwin S. Holmes, Junior, the power lay, did furnish to the said Lewis C. Van Riper the matters and things and other information to be contained in said cotton crop report so to be issued and published on or about the third day of September in said last mentioned year.

And the Grand Jurors aforesaid upon their oath aforesaid,

125 do further present, that in further pursuance of said unlawful conspiracy, combination, confederation and agreement last aforesaid and to further effect the object thereof, and to wit, at the District aforesaid, the said Lewis C. Van Riper, with the guidance and assistance of the matters and things and other information so as last aforesaid furnished to him by the said Edwin S. Holmes, Junior, and by the said Frederick A. Peckham, did on the thirtieth day of August, in the year of our Lord one thousand nine hundred and four and on divers other days between said last mentioned day and the second day of September in the same year, and before the official issuance and publication of the cotton crop report on said last mentioned day, sell large quantities of cotton at the prices then prevailing in the open market; and that on said last mentioned day the said cotton crop report was officially issued and published and that after the said official issuance and publication of said last mentioned cotton crop report there was a decline in the market price of cotton; and that thereupon and after such official issuance and publication of said last mentioned report and after said decline in the market price of cotton, the said Lewis C. Van Riper bought large quantities of cotton corresponding in quantity with the amounts so theretofore sold by him and at prices lower than those at which he had so sold said cotton, and did probably make larges gains and profits, to wit, gains and profits to the amount of twenty-six hundred and eight dollars.

And the Grand Jurors aforesaid upon their oath aforesaid, do further present:

126 That in further pursuance of the said unlawful conspiracy, combination, confederation and agreement last aforesaid and to further effect the object thereof and to wit at the District aforesaid, the said Frederick A. Peckham on the third day of September in the year of our Lord one thousand nine hundred and four, did receive from the said Lewis C. Van Riper the sum of one hundred and fifty dollars in the national currency and money of the said United States, and three checks drawn by the said Lewis C. Van Riper to the order of said Frederick A. Peckham, one of said checks being for the sum of Two Hundred and twenty dollars and another of said checks being for the sum of three hundred dollars, and the third of said checks being for the sum of six hundred and seventy dollars, a more particular description of which said checks for the sum of two hundred and twenty dollars and three hundred dollars the Grand Jurors aforesaid are unable to give, and the said check for the sum of six hundred and seventy dollars being of the tenor following, that is to say:

"No. XXX. HOBOKEN, N. J., *Sept. 3rd*, 1904.

The Second National Bank of Hoboken, Through the New York Clearing House Association,

427 Pay to F. A. Peckham or order Six hundred seventy & no 100 Dollars.

$670 00 00. LEWIS C. VAN RIPER."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement last aforesaid, and to further effect the object thereof, and at the District aforesaid, the said Frederick A. Peckham on the third day of September, in the year of our Lord one thousand nine hundred and four, did give to the said Lewis C. Van Riper a receipt of the tenor following, that is to say:

"SEPT. 3, '04.

Rec'd from Mr. L. C. Van Riper $150.00 cash—and checks for $670.00, $300.00, $220.00, respectively, paying all acc'ts in full to date.

F. A. PECKHAM."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement last aforesaid, and to further effect the object thereof, and at the District aforesaid, the said Frederick A. Peckham on the third day of September, in the year of our Lord one thousand nine hundred and four, did endorse the said check for the sum of six hundred and seventy dollars on the back thereof, the said endorsement being of the tenor following, that is to say: "F. A. Peckham", and did deliver the said last mentioned check to the said Edwin S. Holmes, Junior.

And that in further pursuance of the said unlawful con-
428 spiracy, combination, confederation and agreement last aforesaid, and to further effect the object thereof, and at the District aforesaid, the said Edwin S. Holmes, Junior, on the fifteenth day of September, in the year of our Lord one thousand nine hundred and four, did endorse the check last mentioned on the back thereof, the said endorsement being of the tenor following, that is to say, "E. S. Holmes, Jr.," and on the day and at the place last aforesaid did present the said check last mentioned to the General National Bank of Washington City, and did receive in exchange therefor the sum if six hundred and seventy dollars in the national currency and money of the said United States.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present:

That in further pursuance of the said unlawful conspiracy, combination, confederation and agreement last aforesaid, and to further effect the object thereof, and to wit, at the District aforesaid, the said Frederick A. Peckham on the twenty-sixth day of September, in the year of our Lord one thousand nine hundred and four, did write and mail to the said Lewis C. Van Riper at the city of New York

in the State of New York a letter of the tenor following, that is to say:

"Long conference Sunday between Colonel and man. S. has done something P. does not like. Is going, without S. know-
129 ing it, if possible, to put price up high as possible before 1st. Then, if figures show 89 say, or better, instead of 81.4, as before, something will drop. Belief here is you can get it going and coming. P. going to break S. later, if he can.

Destroy Sure."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement last aforesaid and to further effect the object thereof, and at the District aforesaid, the said Frederick A. Peckham on the twenty-eighth day of September, in the year of our Lord one thousand nine hundred and four, did write and send by telegraph to the said Lewis C. Van Riper at the City of New York in the State of New York a telegram of the tenor following, that is to say:

"WASH'N, D. C., *Sep.* 28.

L. C. Van Riper, 108 Fulton St., N. Y.:

Nothing new since telephoning. Will not phone at nine morning unless something developes.

F."

And that in further pursuance of the unlawful conspiracy, combination, confederation and agreement last aforesaid, and to further effect the object thereof, and to wit at the District aforesaid, the said Frederick A. Peckham on the twenty-eighth day of September, in the year of our Lord one thousand nine hundred and four, did write and mail to the said Lewis C. Van Riper at the city of
130 New York in the State of New York a letter of the tenor following, that is to say:

"TUESDAY, WASHINGTON, D. C., *Sept.* 28, 1904.

DEAR VAN: As stated over phone party went to B.—'phoned N. Y. and evidently did not say anything *definite* as to movements—but inference was that he was going to get in and buy. When I said over 'phone party thinks—only advised what Colonel inferred. Not intended as my 'thinking'. Regret cannot get at it more definitely—and that program we were told about has not been, so far, carried out. From talks Col. has had with man he believes they will start to buy tomorrow if they did not today. Note prices have advanced a little. Remember that Mr. P. (in N. Y.) would not to say over phone to Balt. things he would if talking face to face, hence my aim on phone, and in this, to give you as good an idea as we have as to plans.

No use phoning in A. M. So wired tonight after talking with Col.—since talking to you on phone.

F."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement last aforesaid and to further effect the object thereof, and to wit at the District aforesaid, the said Frederick A. Peckham on the twenty-ninth day of September, in the year of our Lord one thousand nine hundred and four, did write and send by telegraph to the said Lewis C. Van Riper at the city of New York in the State of New York a telegram
431 of the tenor following, that is to say:

"9 P. M. Trying to get you on phone. This is since talking to you at 7.

L. C. V. R.

At 12 tonight party goes to N. Y. Before 8 a. m. tomorrow (Thursday) Price will be advised that drop will be 12 to 15 points; that is from 81.4. Also that Texas report from present data shows a drop from 76 to 49. Something remarkable. Col. padded matters, making very strong information which P. will get tomorrow—so he will be sure to jump right in & buy. Also party will be put in for usual ten thousand. Deterioration promises to be big—very. Reports not all in, but important ones reed. All show above.

Please destroy at once. Col. says he will put up 50 points tomorrow sure—to get in early & heavy & get all back & more."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement last aforesaid, and to further effect the object thereof, and to wit at the District aforesaid, the said Frederick A. Peckham on the twenty-sixth day of September, in the year of our Lord one thousand nine hundred and four, did receive from the said Lewis C. Van Riper two checks of the tenor following, that is to say:

"No. A 1625. HOBOKEN, N. J., *Sept. 26th*, 1904.

The Second National Bank of Hoboken, Through New
432 York Clearing House Association.

(Not over one hundred dollars)

Pay to the order of F. A. Peckham One hundred & 00 100 Dollars.
100 00 100. LEWIS C. VAN RIPER."

"No. A 1626. HOBOKEN, N. J., *Sept. 26th*, 1904.

The Second National Bank of Hoboken, Through New York Clearing House Association.

(Not over one hundred 100)

Pay to the order of F. A. Peckham One Hundred & 00 100 Dollars.
100 00 LEWIS C. VAN RIPER."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement last aforesaid, and to further effect the object thereof, and to wit at the District aforesaid,

the said Frederick A. Peckham on the twenty-seventh day of September, in the year of our Lord one thousand nine hundred and four, did endorse said check bearing number A 1626 on the back thereof, said endorsement being of the tenor following, that is to say, "F. A. Peckham," and did deliver the said check to the said Holmes.

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement last aforesaid, and to further effect the object thereof, and to wit at the District aforesaid, the said Holmes, on the twenty-ninth day of September, in the year of our Lord one thousand nine hundred and four, did endorse
433 said last mentioned check on the back thereof, said endorsement being of the tenor following, that is to say: "E. S. Holmes, Jr.", and did present the same to the Central National Bank of Washington City, and did receive in exchange therefor the sum of one hundred dollars in the national currency and money of the said United States.

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement last aforesaid, and to further effect the object thereof, and to wit at the District aforesaid, the said Frederick A. Peckham on the twenty-seventh day of September, in the year of our Lord one thousand nine hundred and four, did endorse said check bearing number A 1625 on the back thereof, said endorsement being of the tenor following, that is to say, "D. A. Peckham," and did deliver the said check to the said Edwin S. Holmes, Junior.

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement last aforesaid, and to further effect the object thereof, and to wit at the District aforesaid, the said Edwin S. Holmes, Junior, on the first day of October, in the year of our Lord one thousand nine hundred and four, did endorse said last mentioned check on the back thereof, said endorsement being of the tenor following, that is to say, "Signature of check O. K. E. S. Holmes, Jr.", and did present the said last mentioned check to the Central National Bank of Washington City, and did receive in exchange therefor the sum of one hundred dollars
434 in the national currency and money of the said United States.

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement last aforesaid, and to further effect the object thereof, and to wit at the District aforesaid, the said Frederick A. Peckham did on the third day of October, in the year of our Lord one thousand nine hundred and four write and send by telegraph to the said Van Riper at the city of New York, in the State of New York a telegram of the tenor following, that is to say:

"WASHINGTON, D. C., *Oct.* 3, 1904

L. C. Van Riper, 108 Fulton Street, New York.

Successful bidder best contract ever had.

FRED."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement last aforesaid, and to

further effect the object thereof, the said Moses Haas on the twenty-fifth day of November, in the year of our Lord one thousand nine hundred and four did come to the District aforesaid and did there remain until the thirtieth day of the same month, for the purpose of learning from the said Edwin S. Holmes, Junior, matters and things and other information which were to be contained in the cotton crop report which was to be issued and published by the Department of Agriculture on or about the third day of Decem-
435 ber, in the year of our Lord one thousand nine hundred and four.

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement last aforesaid, and to further effect the object thereof, and to wit at the District aforesaid, the said Moses Haas, on the twenty-fifth day of November in the year last aforesaid did give to the said Lewis C. Van Riper the sum of ten thousand dollars to be used by the latter in the purchase or sale of cotton before the publication of said cotton crop report on or about said third day of December, in the year of our Lord one thousand nine hundred and four.

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement last aforesaid, and to further effect the object thereof, and to wit at the District aforesaid, on the twentieth day of November, in the year of our Lord one thousand nine hundred and four, and on divers other days between the said last mentioned — and the third day of December in the year of our Lord one thousand nine hundred and four, the said Edwin S. Holmes, Junior, and the said Frederick A. Peckham and the said Moses Haas did furnish to the said Lewis C. Van Riper matters and things and other information which were to be contained in the said cotton crop report which was to be issued and published on said last mentioned day.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present:

That the said Lewis C. Van Riper with the aid and guidance of said matters and things and other information so furnished
436 to him by said Edwin S. Holmes, Junior, Frederick A. Peckham and Moses Haas as aforesaid, and to wit at the District aforesaid, did on said twentieth day of November, in the year of our Lord one thousand nine hundred and four, and on divers other days between said last mentioned day and the third day of December, in the year of our Lord one thousand nine hundred and four sell large quantities of cotton to be delivered in the month of March next following; that upon the said third day of December, in the year of our Lord one thousand nine hundred and four the cotton crop report for that month was officially approved by the Secretary of Agriculture and was issued and published; that after the issuance and publication of said report the market price of cotton to be delivered in the month of March next following greatly decreased, and the said Lewis C. Van Riper thereupon and at such decreased prices bought large quantities of cotton corresponding in amount to such quantities so theretofore sold by him, and that the said Lewis C. Van Riper

did thereby make large gains and profits amounting in the aggregate to a large sum, to wit, to the sum of two hundred and ten thousand two hundred and seventy-one dollars and sixty-two cents.

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement last aforesaid, and to further effect the object thereof, and to wit at the District aforesaid, the said Moses Haas on the twelfth day of December, in the year of our Lord one thousand nine hundred and four, did re-
437 ceive from the said Lewis C. Van Riper the sum of fourteen thousand two hundred and fifty dollars in the national currency and money of the said United States, and did on the day and at the place last aforesaid receive from the said Lewis C. Van Riper a check of the tenor following, that is to say:

"No. XXX. HOBOKEN, N. J., *Dec. 12th*, 1904.

The Second National Bank of Hoboken, Through the New York Clearing House Association.

Pay to M. Haas or order Twenty four thousand two hundred fifty Dollars.

$24250.00. LEWIS C. VAN RIPER."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement last aforesaid, and to further effect the object thereof, on the day and at the place last aforesaid, the said Moses Haas did give to the said Edwin S. Holmes, Junior, and the said Edwin S. Holmes, Junior, did receive from the said Moses Haas the said sum of fourteen thousand two hundred and fifty dollars in the national currency and money of the said United States so received by the said Moses Haas from the said Lewis C. Van Riper.

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement last aforesaid, and to further effect the object thereof, and to wit at the District aforesaid and on the thirtieth day of December, in the year of our Lord one thousand nine hundred and four, the said Moses Haas did receive from the said Lewis C. Van Riper the sum of ten thousand seven hundred and sixty-seven dollars and ninety cents in the national currency and money of the said United States and a check
438 of the tenor following, that is to say:

"No. A 1788. HOBOKEN, N. J., *Dec. 30th*, 1904.

The Second National Bank of Hoboken, Through New York Clearing House Association.

Pay to the order of M. Haas Twenty five hundred twenty-five 00/100 Dollars. (Not over Three Thousand $30008.)

$2525 00

LEWIS C. VAN RIPER."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement last aforesaid, and to further effect the object thereof, and to wit at the District aforesaid, and on the thirty-first day of December, in the year of our Lord one thousand nine hundred and four, the said Moses Haas did receive from the said Lewis C. Van Riper the sum of twenty-five thousand dollars in the national currency and money of the said United States, and a check of the tenor following, that is to say:

"No. A 1791. HOBOKEN, N. J., *Dec.* 31*st*, 1904.

The Second National Bank of Hoboken, Through New York Clearing House Association.

Pay to the order of M. Haas $38,292.90 Thirty-eight thousand two hundred ninety-two & 90 100 Dollars.
$38,292.90.

LEWIS C. VAN RIPER."

And that in further pursuance of the said unlawful conspiracy, conspination, confederation and agreement last aforesaid, and to further effect the object thereof, and to wit at the District aforesaid and on the thirtieth day of December, in the year of our
439 Lord one thousand nine hundred and four, the said Moses Haas did give to the said Edwin S. Holmes, Junior, and the said Edwin S. Holmes, Junior, did receive from the said Moses Haas the sum of ten thousand seven hundred and sixty-seven dollars and ninety cents in the national currency and money of the said United States.

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement last aforesaid, and to further effect the object thereof, to wit at the District aforesaid and on the thirty-first day of December, in the year of our Lord one thousand nine hundred and four, the said Moses Haas did give to the said Edwin S. Holmes, Junior, and the said Edwin S. Holmes, Junior, did receive from the said Moses Haas the sum of twenty-seven thousand and twenty-five dollars in the national currency and money of the said United States.

Against the form of the statute in such case made and provided, and against the peace and government of the said United States.

DANIEL W. BAKER,
Attorney of the United States in and for the District of Columbia.

440 *Authentication.*

Supreme Court of the District of Columbia:

I, John R. Young, Clerk of the said Court, do hereby certify that the *following* copy of indictment, annexed to this certificate, is a true copy of the original on file and of record in said office, and that said original indictment is pending in said Court.

Witness my hand and seal of said Court this 30th day of October, 1908.

[L. S.] JOHN R. YOUNG, *Clerk.*

I, Harry M. Clabaugh, Chief Justice of said Court do certify the foregoing attestation by John R. Young, Clerk of said Court, to be in due form.

Witness *by* hand and seal this 30- day of October, 1908.

HARRY M. CLABAUGH. [SEAL.]
Chief Justice.

I, John R. Young, Clerk of said Court, hereby certify that the Honorable Harry M. Clabaugh, whose genuine signature is subscribed to the foregoing certificate, was, at the time of signing and attesting the same, Chief Justice of said Court, duly commissioned and qualified.

Witness my hand and the seal of said Court, this 30th day of October, 1908.

[L. S.] JOHN R. YOUNG, *Clerk.*

441 UNITED STATES
vs.
MOSES HAAS AND FREDERICK H. PECKHAM.

Opinion of United States Commissioner Ridgway Discharging Defendants.

442 Opinion of United States Commissioner Ridgway Discharging Defendants.

UNITED STATES
vs.
MOSES HAAS AND FREDERICK H. PECKHAM.

The complaint against these defendants charged them with a violation of Section 5440 of the United States Revised Statutes, which provides as follows:

"If two or more persons conspire, either to commit an offense "against the United States, or to defraud the United States, in any "manner or for any purpose, and one or more of such parties do "any act to effect the object of the conspiracy, all the parties to such "conspiracy shall be liable to a penalty of not more than Ten Thou- "sand Dollars, or to imprisonment for not more than two years or "both fine and imprisonment in the discretion of the Court."

and accompanying the complaint was a certified copy of indictment, found by the Grand Jury of the District of Columbia, at a Criminal Term of the Supreme Court of the District of Columbia, and a bench warrant which had been issued thereupon. Upon these papers I issued my warrant and the defendants having been arraigned before me I am asked to grant their removal to the District of Colum-

bia, for trial, under the powers conferred by Section 1014 of the Revised Statutes, which provides:

"For any crime or offense against the United States, the offender
" may, by any justice or judge of the United States, or by any U. S.
" Commissioner * * * where he may be found, and agreeably
" to the usual mode of process against offenders in such State * * *
" be arrested and imprisoned or bailed, as the case may be, for trial
" before such Court of the United States as by law has cognizance of
" the offense. * * * And where any offender or witness is
" committed in any district other than where the offense is to
443 " be tried, it shall be the duty of the judge of the District
" where such offender * * * is imprisoned, seasonably
" to issue, and of the Marshal to execute, a warrant for his removal
" to the District where the trial is to be had.

Upon the hearing, the indictment so found was offered in evidence, and the identity of the defendants was proven to my satisfaction; and upon such proof the Government rested the case, and insisted that a prima facie case had been made out.

Counsel for defense thereupon moved for the discharge of the defendants; on the ground that no offense against the United States had been made out, as would appear by an inspection of the indictment following which motion an extended argument was had.

The indictment is quite voluminous, occupying fifty-eight typewritten sheets, and is found against Edwin S. Holmes, Junior, Frederick A. Peckham and Moses Haas, and consists of two counts. Briefly stated, the first count alleges that in the Department of Agriculture of the United States, on and before June 2nd, 1904, there was, and thence hitherto, there has been, a bureau known as the Bureau of Statistics, under the management of an officer and employee of the United States, known as Statistician and chief of the Bureau of Statistics, and other officers and employees, one of whom was known as associate statistician, and another known as assistant statistician and assistant chief of the Bureau of Statistics, who were charged with the duty of preparing at certain periods, reports upon the condition of certain crops grown in the United States, and known as crop reports, stating the condition of the crops, with explanations, comparison and information useful for illustrating the matter contained in such reports, and that each of such reports was re-
444 quired by law to be submitted to and *and* officially approved by the Secretary of Agriculture before being issued or published; and that such crop reports were issued and published for the purpose of diffusing among the people of the United States useful information on subjects connected with agriculture. And that such statistician, and associate statistician, and other officers and employees of said Bureau were charged with the duty of honestly and carefully guarding and keeping secret, and not divul-ing to any person not employed in said Bureau any information acquired by him in the preparation of such crop reports, and in collecting and compelling statistical matter for use in such reports. That among the reports so prepared was the cotton crop report, which was issued and published about the 3d day of each month, from June to December in each year. That on November 16th, 1903, and thence

continually until the 9th day of June, 1905, one Edwin S. Holmes, Junior held and occupied the office of, and was such assistant statistician in said Bureau of Statistics in the Department of Agriculture, and charged with the duty of aiding and assisting said statistician in the preparation of said crop reports, and in the absence of said statistician was charged with the duty of preparing with the aid and assistance of other officers and employees of the Bureau, all of said crop reports; and that said Holmes did, before the official approval and publication of each of said crop reports, acquire and have knowledge of the statistical matter from which said crop reports were prepared, and of the information to be contained in said cotton crop reports. That it was the duty of said Holmes to honestly and carefully guard and keep secret and not divulge to any person
445 not employed in or connected with said Bureau, any of the said statistical matter, and of the information to be contained in any of said cotton crop reports so acquired by him, until the said reports were published. That all and singular the premises aforesaid were known to said Holmes and to Frederick A. Peckham and Moses Haas. That on June 2nd, 1904, at the District of Columbia, said Holmes, Peckham and Haas, the two latter not then being employed in or connected with said Bureau of Statistics, unlawfully did conspire, combine, confederate and agree together, to commit an offense against the United States, that is to say, the offense of misconduct on the part of him, the said Holmes, in his said scheme and arrangement, that is to say, in violation of the duty of said Holmes to honestly and carefully guard and keep secret, all statistical matter and information for said cotton reports in advance of official publication, and to prevent, obstruct and impair the due administration of affairs, and to advance the pecuniary interests of them the said Holmes, Peckham and Haas, to prejudice of the United States, and he, the said Holmes, should and would, in so far as in him the power lay, furnish the statistics and information so acquired, to said Peckham & Haas, and those procured by them, to be used by them to advance their pecuniary interests, by buying and selling cotton. That they operated through one Lewis C. Van Riper and made great gains and profits thereby, and received therefor the various sums of $2,680; $670; $21,250; $2,525; $38,292.20 and other sums amounting in the aggregate to $210,271.62.

446 The second count is a repetition of the allegations contained in the first count, except that instead of alleging the commissions of the offense of misconduct, it alleges that Holmes, Peckham and Hass "unlawfully did conspire, combine, confederate and agree together, to defraud the United States in the dishonest manner and through and by means of the dishonest scheme and arrangement following," repeating the averments as in the first count.

In the consideration of this case I am greatly aided by the very able arguments of the District Attorney, and Mr. Morgan H. Beach, the special Assistant Attorney General, and Messrs. Max & Miller, the counsel for defendants, in so clearly presenting the case in its various phases.

The indictment should not be declared insufficient, through any technical deficiency, and I shall not so declare it. The question here

is not whether this indictment is open to criticism, but whether it states an offense sufficient in law to constitute a crime punishable by the laws of the United States.

However reprehensible Holmes may have been as an officer or employee of the Government, in violating the obligation of loyal trust and confidence reposed in him as such employee, by divulging the secrets of the Bureau for the purpose of promoting his own personal advantage, these defendants were in no way connected with the Government, nor clothed with the garment of secrecy. But we are
447 not called upon to pronounce upon which is reprehensible. The great question to be met is, whether this indictment alleges an offense against the United States which is prohibited by any law of the United States.

The power of removal has frequently been invoked and passed upon. I will therefore now refer to some of the authorities upon that branch of the case, and then pass to other authorities which have been cited by counsel.

In re Dana (58 Fed. Rep. 886) was before Judge Brown in this District in 1895, for the removal of the publisher of the Sun newspaper to the District of Columbia, on an indictment for libel. The Commissioner held him for removal, but Judge Brown discharged him. It was there held: On an application for removal under Sec. 1014, the defendant has the right to an examination, when demanded, and to show want of probable cause, and the evidence offered should be received.

In that case, Judge Brown says:

"The commitment was made and removal is asked, upon no evi-
" dence of crimination, or of probable cause, except a copy of the in-
" dictment found in the District of Columbia. Its reception as evi-
" dence of criminality was objected to. The objection was overruled
" and the finding of the indictment was treated as so far conclusive
" on the question of probable cause, as to leave nothing for the Com-
" missioner, as a committing magistrate, to determine, except the
" identity of the defendant. Evidence offered by the defendant to
" disprove probable cause was accordingly rejected. On the question
" of criminality, no witness was called for the prosecution, and none
" was allowed for the defendant. It is claimed by the prosecution,
" that the long practice of this district warrants that course * * *
" I am equally satisfied that libel, in the District of Columbia, does
" not belong to the class of offenses contemplated, or provided for by
" the 33d section of the Judiciary act, or by Section 1014 of the Re-
" vised Statutes which re-enacted it."

448 Judge Brown says further:

"Judge Lowell in Re Alexander (1871) under section 1014
" uses this language: 'such an indictment is only a piece of evidence
" ' which may be met and controlled; but where it stands by itself
" ' and is uncontradicted, it is enough to authorize the warrant.' "

Judge Brown also cites the case of U. S. v. Fowkes, 19 Fed. Rep. 50, and the same case on appeal, 53 Fed. Rep., 13 and 4 C. C. A. 394, as authority for the indictment as evidence but not conclusive; and that the same rule was applied in U. S. v. Rogers, 23 Fed. Rep.

658—where Judge Parker says, that on application for removal, the Judge "may go behind the indictment to ascertain where the trial is to be had.

And then Judge Brown adds:

"The fourth amendment of the Constitution provides that, 'no "warrant shall issue but upon probable cause, supported by oath or "affirmation. The proceeding contemplated by section 1014 is "moreover, an original and independent proceeding. It makes no "reference to any indictment found elsewhere.'"

In re Richern 100 fed. Rep., 295 (Wisconsin, 1900) it was held:

"On the application for a warrant for the removal of a defendant "to another district for trial on a criminal charge, the Court is not "restricted to questions of jurisdiction, but may inquire generally "into the grounds of the charge, to ascertain the existence of probable "cause. In such a case, an indictment is presumptive evidence of "probable cause, if an offense within the statute is clearly stated "therein, but it is not conclusive and, if doubt be raised in any ma-"terial aspect of the charge, must be supported by proof aliunde.'"

In re Wolf and another (27 Fed. Rep., 606, Parker, J. Arkansas, 1886, it was held:

449 "1. A Judge of the United States Court, when acting on an "application for a warrant of removal of a person charged "with a crime, from one district to another for trial, is to exercise "sound judicial discretion. He must look to the question of the "jurisdiction of the Court sitting where he is asked to remove the "prisoner to try the case. To determine where the trial is to be had, "he may look into the whole case to see that the Court where the "party is to be removed has jurisdiction over the place, the person "and the subject matter."

"2. There may be want of subject matter, either because there is "no law making the act charged a crime, or because the act is not "properly charged, or that the party charged has not done the act."

"7. Conspiracy, as defined by section 5440 Rev. Stat. means an "unlawful agreement to do an act which by some law of the United "States has been made a crime."

In U. S. v. Rogers, (23 Fed. Rep. 658), in 1885, Judge Parker had previously held:

"In an application for removal under section 1014, the judge may "go behind the indictment, as jurisdiction to try, embraces jurisdic-"tion of the person, of the place and of the subject matter. There "must be a concurrence of all of these to give the right to try."

In re Coring (51 Fed. Rep. 205) before Ricks, District Judge, Ohio*m* 1892, it was held:

"On an application to a federal court for the removal of a resident "of the district to a distant State and District for trial, it is the duty "of the Court to scrutinize the indictment, disregarding technical "defects, but to refuse the warrant, if the crime alleged is not triable "in the district to which a removal is sought, or if the indictment "fails to charge any offense under the law."

And Judge Ricks here cites a case, saying, that in such a case, and

for such failure, the Judge "would misconceive his duty, and fail to protect the liberty of the citizen."

In re Benson, J., in 130 Fed. Rep. 486, before Lacombe J., in May 1904, it was held: "The indictment is prima facie evidence of the commission of the offense." In that proceeding no
450 evidence was introduced by defendant controverting any of the averments of the indictment. The Government, however, called several witnesses, and undertook to prove the offense, independent of the indictment.

In re Benson, (131 Fed. Rep. 968) came before Judge Lacombe in July 1904, where he discharged the defendant. It was there held:

"Technical or formal objections to the sufficiency of an indict-
"ment will not be considered in a proceeding for removal of a
"federal prisoner to the district in which he is triable, but will be
"left for determination by the Court in which it was found; but, if
"on a broad and liberal construction, the indictment does not appear
"to charge an offense, the prisoner should not be held for removal."

In U. S. v. Lee (84 Fed. Rep. 626) before the District Court, California, in 1898, for removal, under Sec. 1014, the only ground for removal was the indictment; and it appeared from an inspection of the indictment that the Court had no jurisdiction of the alleged offense; and the defendant was discharged.

In re Beshears (79 Fed. Rep., 70) was before Woolson, District Judge, Iowa, in 1897, on an application for removal under section 1014, in which he says:

"In the case of In re Terrell, 51 Fed. Rep. 213-214, Circuit Judge
"Lacombe on the hearing upon habeas corpus, after citing various
"cases uses these words: 'This is country of vast extent, and it would
"'be a grave abuse of the rights of the citizens, if when charged
"'with alleged offenses, committed, perhaps, in some place he had
"'never visited, he were removed to a district thousands of miles
"'from his home, to answer to an indictment fatally defec-
"'tive.'"

451 Agnew v. United States (165 U. S. R. 36) was before the Supreme Court of the United States in 1897, and the opinion of the Court was delivered by Chief Justice Fuller, where he says:

"In criminal cases the burden of establishing guilt rests on the
"prosecution, from the beginning to the end of the trial. But
"when a prima facie case has been made out, as conviction follows
"unless it is rebutted, the necessity of adducing evidence then de-
"volves on the accused."

The recent case of Beaver v. Henkel (194 U. S. R., 73-78), for a warrant for removal, under Sec. 1014, was decided by the Supreme Court of the United States in April, 1901, where it was held:

"Statutory provisions must be interpreted in the light of all
"that may be done under them. In all controversies, civil or
"criminal, between the Government and an individual, the latter is
"entitled to reasonable protection."

The Fifth Amendment is satisfied by one inquiry and adjudication.

"Within the spirit of the rule of giving full effect to the records "and judicial proceedings of other Courts, accepted everywhere "through the United States as at least prima facie evidence of the "existence of probable cause. And the place where such inquiry "must be had, and the decision of the grand jury obtained, is the "locality in which by the Constitution and laws of the final trial "must be had. * * * It is competent to show in habeas corpus "proceedings by parol evidence, that the accused was not within the "demanding State when the alleged acts were committed, however "regular the extradition papers may be." Citing in re Mohr, 73 "Alabama 508."

The opinion of the Court in the last mentioned case of Beavers v. Henkel, was by Mr. Justice Brewer, and in it he used this language:

452 "It may be conceded that no such removal should be "summarily and arbitrarily made. There are risks and "burdens attending it which ought not to be needlessly cast upon "any individual." * * * "While the indictment is prima "facie evidence it is urged that there are substantial reasons why it "should not be regarded as conclusive. An investigation before the "grand jury it is said, is generally ex parte—although some times "witnesses in behalf of the defendant are heard by it—and the "conclusion of such ex parte inquiry ought not to preclude the "defendant from every defense, even the one that he was never "within the State or district in which the crime is charged to have "been committed, or authorize the government to summarily arrest "him whenever he may be found, transport him perhaps far away "from his home, and subject him among strangers to the difficulties "and expense of making his defense."

In U. S. v. Greene, et al., (100 Fed. Rep. 941), before Brown District Judge, Southern District of New York, 1900, it was held:

"While an indictment is admissible in evidence before a Com- "missioner, in a proceeding for removal of the defendant to another "district for trial upon the question of probable cause, it is not "conclusive, but it is entitled to weight only as an affidavit tending "to establish the facts and circumstances therein alleged."

"The proceedings or commitment under section 1014 is an original "proceeding, to be conducted according to the laws of the State in "similar proceeding before committing magistrates; that the object "of the proceeding is to enable the Commissioner to ascertain for "himself whether from the proof of the facts and circumstances "produced before him, there is probable cause to believe the de- "fendants guilty of the offense charged; that the mode of proceeding "in such cases is precisely the same whether there is an indictment "or no indictment."

"In New York, the right of the accused to produce witnesses in "his own behalf before committing magistrates was confirmed by "express statute more than 70 years ago, and more than 40 years "before the enactment of section 1014 of the United States Revised "Statutes; and such is the uniform course of procedure."

The application for removal in that case was denied.

453 U. S. v. Greene et al. (108 Fed. Rep., 816), also came before Judge Brown one year later—in which held:

"Where the Commissioner, on the hearing in proceeding for "the removal of persons charged with crime, to another district for "trial, had before him any competent legal evidence upon which "to exercise his judgment as to whether there was probable cause "to believe the accused guilty, his finding upon that question can- "not be reviewed by the court on an application for an order of "removal."

In re Wood (95 Fed. Rep., 288), was before Bellinger, District Judge, Oregon, in 1899, he held:

"The action of a Commissioner in discharging a person in pro- "ceedings under section 1014 for his removal to another district for "trial on a criminal charge after a full hearing, should be con- "clusive on the Government, especially where the testimony offered "is that upon which the indictment was found."

"The indictment is evidence, but not conclusive."

"This law is a law in restraint of liberty and is to be strictly "construed and strictly pursued."

In the case of U. S. v. Horner, (143 U. S. R., 207), before the U. S. Supreme Court in 1892, the opinion of the Court being by Mr. Justice Blackford, *where* it was held: that in a hearing for removal, under section 1014 the commissioner has full jurisdiction to decide all questions of fact for the purpose of the removal of the accused and his decision will not be reviewed.

In re Backnap (96 Fed. Rep. 614.) cited by the Government, was for removal under sec. 1014 and the court there held that the court in Texas had no jurisdiction of the offense charged and it would be unjust, as well as useless, to send the defendant there for trial. They were therefore discharged.

454 Benson v. Henkle, (198 U. S. R., 1), before the Supreme Court of the United States in April of the present year, Justice Brown delivering the opinion of the Court in which he says:

"The extent to which a Commissioner in extradition may inquire "into the validity of an indictment put in evidence before him as "proof of probable cause of guilt, has never been definitely settled, "although we have had frequent occasion to hold generally that "technical objections should not be considered" * * * "If the "indictment were a mere information or obviously upon inspection, "set forth no crime against the United States or a wholly different "crime from that alleged as the basis of the proceedings, or if such "crime be charged to have been committed in another district from "that to which the extradition is sought, the commissioner could not "properly consider it as a ground for removal. In such cases re- "sort must be had to other evidence of probable cause." * * *

"The anomaly in Rev. Stat. Sec. 1014, as applied to this dis- "trict, consists in its limitations to offenses against the United States "since the courts of the District of Columbia have a local as well "as a Federal jurisdiction and may punish for offenses, which if "committed within the limits of any other district of the United "States, would be relegated to State Courts." * * *

"Certain cases are to be found, which hold that persons accused "of crimes committed within the District of Columbia against its "local laws, cannot be removed to this district for trial under sec- "tion 1014. * * *

"The question, however, does not arise in this case, since the "indictment charges an offense against the United States in viola- "tion of section 5451 respecting the bribery of public officers."

In the case of Benson v. Henkel, Mr. Justice White, Mr. Justice Peckham and Mr. Justice McKenna, say, they

"agree in the conclusion just announced, and in the main with "the reasoning of the opinion. But we are unable to concur in the "view that where the commissioner may be of the opinion that in- "dictment charges no offense against the laws of the United States, "and there is no other proof of probable cause before him, the order "of arrest may be made remitting to the Court where the indictment "was found all questions of the sufficiency of the indictment. "* * * The order *of* removal involves judicial rather than "ministerial action." * * * Whether in the indict-
155 "ment, or as a result of their testimony, the order to remove "the accused can only be issued upon a showing of probable "cause (Greene vs. Henkle, 183 U. S.)" * * * "The argu- "ment chiefly relied upon against the right to issue the order of ar- "rest, and subsequently of removal, rested upon the alleged in- "sufficiency of the indictment to charge any offense within the "terms of the statute." * * * "In our opinion the Commis- "sioner, where the case is thus presented, must pass upon the suf- "ficiency of the indictment. It is his duty to decide whether an "offense is charged with a view to making or withholding the "order of arrest, which, when made becomes the basis of an order "of removal of a citizen to the place of trial which may be many "miles distant from his home. Such order is proper only in cases "wherein probable cause has been shown to believe the accused "guilty of an offense cognizable by the laws of the United States "in the proceeding pending against him, for which he is to answer "at the place of indictment."

In the matter of Charles A. Dana, (2 Benedict's D. C. R., 1) July, 1873, Dana, publisher of the Sun newspaper was indicted for criminal libel in the District of Columbia, and application was made under the 33d Section of the Act of Congress of Sept. 24, 1789, (now sect. 1014 of the U. S. Rev. Stat.), for his removal to the District of Columbia for trial, as for a "crime or offense against the United States," in which case the Commissioner held him for removal, but Judge Blatchford discharged him.

The case of U. S. v. Aaron Burr, (Fed. case No. 14,692), before the Court in 1807, Chief Justice Marshall held that

"On a preliminary examination, probable cause must be shown. "Proof furnishing good reason to believe that the crime alleged "has been committed by the person charged."

Northern Securities Co. v. U. S. (193 U. S. R., 197) was before the Supreme Court of the United States last year, and it was there held

"Cases should not be brought within a statute containing criminal
" provisions that are not clearly embraced by it."

456 U. S. v. Curley (122 Fed. Rep., 783) April, 1903, before the Circuit Court in Massachusetts, was a case of conspiracy for fraud on the Federal Government, by foreign civil service papers in violation of Section 5418 of the U. S. Rev. Stat., and there

"Held that a conspiracy by which one falsely impersonated an-
" other at a civil service examination, and makes a declaration
" sheet for the latter, is within the statute; pecuniary fraud not
"being alone intended."

U. S. vs. Hunting, (82 Fed. Rep. 883) Sept. 1897, was for exactly the same offense.

The case of U. S. v. Benson (70 Fed. Rep. 591), California, 1895, was in some respects like the present case, in that the indictment charged, under Section 1440, 1st, a conspiracy to commit an offense against the United States; and 2nd, a conspiracy to defraud the United States in any manner and for any purpose. In that case, Judge Hawley says:

"The national courts cannot resort to the common law as a
" source of criminal jurisdiction. Crimes and offenses cognizable
" under the authority of the United States can only be such as are
" expressly designated by law. It devolves upon Congress to de-
" fine what are crimes, to fix their punishment and to confer juris-
" diction for their trial. U. S. v. Walsh, 5 Dill., 60 Fed. Case No. 16,-
" 636; U. S. v. Martin 4 Cliff., 156 Fed. Case No. 15,728; In re
" Greene, 52 Fed. Rep. 104; U. S. v. Hudson 7 Cranch 32; U. S.
" vs. Coolidge, 1 Wheaton, 415; U. S. vs. Britton, 108 U. S. 199."

France vs. U. S. (164 U. S. R. 676), Jan'y, 1897, was a case in relation to Lotteries, and the indictment was for conspiracy under Sec. 5440, for violation the Act of Congress of March 2, 1895. Mr. Justice Peckham, delivering the opinion of the Court, says:

457 "The statute does not cover the transaction, and however
" reprehensibe the acts of the plaintiffs in error may be
" thought to be, we cannot sustain a conviction on the ground
" * * * The statute being highly penal rendering its violation
"liable to fine and imprisonment we are compelled to construe it
" strictly."

U. S. v. Milner, (36 Fed. Rep. 890) Alabama, 1888. The indictment was under Section 5440 and charged a conspiracy with intent to defraud the United States.

"4. An allegation that defendants entered into an agreement
" which was corrupt, and with a bad intent, does not sufficiently
" describe the act done to effect the object of the conspiracy."

And Judge Pardee says:

"The case was in reference to the discontinuance of certain suits
" which might be brought by the United States against certain par-
" ties to recover certain lands alleged to have been fraudulently and
" unlawfully obtained from the United States, and he added, "It is
" difficult to see how the United States could be defrauded in any
" manner or for any purpose."

U. S. vs. Greene v. Gaynor (115 Fed. Rep. 343), Georgia, Feby.

1902, before Speer, District Judge. This was a case under section 5440 for conspiring to defraud the United States by obtaining the allowance and payments of fraudulent claims, where the work done at Cumberland Sound, in the Savannah district under the supervision of Capt. Oberlin M. Carter of the Engineer Corps, U. S. Army—Greene and Gaynor not being connected with the Government.

U. S. v. Eaton, (144 U. S. R. 677) April, 1892, was the oleomargerine case, where it was held:

158 "There are no common law offenses against the United "States."

"It is necessary that a sufficient statutory authority should exist "for declaring any act or commission a criminal offense."

Mr. Justice Blatchford, in delivering the opinion of the Court in that case, says:

"It is well settled, that there are no common law offenses against "the United States. U. S. v. Hudson, 7 Cranch, 32; U. S. v. "Coolidge, 1 Wheaton, 415; U. S. v. Britton 108 U. S. 206; Man-"chester v. Massachusetts, 139 U. S. 240, 262, 263 and cases there "cited."

"It was said by this Court in Morrill v. Jones, 106 U. S. 466, 467, "that the Secretary of the Treasury cannot by his regulations alter "or amend a revenue law, and that all he can do is to regulate the "mode of proceeding to carry into effect what Congress has en-"acted * * * Much more does this principle apply to a case "where it is sought substantially to prescribe a criminal offense "by the regulation of a department. It is a principle of criminal "law that an offense which may be the subject of criminal pro-"cedure is an act committed or omitted 'in violation of a public "'law, either forbidding or commanding it. 4 Am. and Eng. Ency. "'of L. 642; 1 Black Com. 5.'"

"It would be a very dangerous principle to hold that a thing "prescribed by the Commissioner of Internal Revenue as a needful "regulation under the oleomargerine act, for carrying into effect "can be considered as a thing 'required by law.'" * * * "It "is necessary that a sufficient statutory authority should exist for "declaring any act or omission a criminal offense."

U. S. v. Britton (108 U. S. R. 199) April, 1883 was a case under the National Banking Laws, Mr. Justice Woods, delivering the opinion of the Court, says:

"There are no common law offenses against the United States. U. S. v. Hudson, 7 Cranch, 32; U. S. v. Coolidge, 1 Wheaton, 415 and section 5214 of the Rev. Stat. for violation of which the defendants were indicted as directors of a national bank does not of itself create any offense against the United States."

159 U. S. v. Schuman (7 Sawyer, R., 136), California, 1866.

This matter was before Mr. Justice Field, and Hoffman, District Judge as to the powers and duties of U. S. Commissioners in criminal cases, in which they held:

"For the faithful discharge of his duty in these particulars he "alone is accountable. He has no divided responsibility with any

"other officer of the government nor is he subject to any other's "control."

It would seem that the allegation of the indictment, that it was Holmes' lawful duty to keep the date of the expected cotton crop reports secret, is negatived by the statute; and the Supreme Court of the United States has held (and it is controlling upon us) that the statute as to one's official duty, is controlling over the allegations of the indictment, (U. S. v. Smith, 124 U. S. R. 525). That case was argued before the Supreme Court of the United States in 1888 in behalf of the defendant by Mr. Root, our present Secretary of State, and he prevailed.

The jurisdiction of the United States Courts is pointed out by the Constitution, and depends exclusively on the constitution. They cannot exercise common law jurisdiction in criminal cases; nor proceed by information in criminal cases, unless the power is granted by Congress.

1. Desty's Fed. Proc. Sec. 1 and citing Ex parte Bollman, 4 Cranch, 75; 1 Gall., 488; Fed. Cases, No. 10,422; U. S. v. Beavers, 3 Wheaton, 336; Fed. Cas. 16,122 and others.

The Constitution and *amendments* provide:

460 Art. 111, Sec. 2 of the Constitution provides:

"the judicial power shall extend to all cases in Law and "Equity, arising under the constitution, the laws of the United "States, &c."

"The judicial power covers every legislative act of Congress."

"No person shall be * * * deprived of life, liberty, or property "without due process of law."

"That the President shall have "power" * * * to appoint" "* * * Judges of the Supreme Court and all other officers of "the United States, whose appointment are not herein otherwise "provided for, and which shall be established by law; but the Con- "gress may by law vest the appointment of such inferior officers, "as they think proper in the President alone, in the Courts of Law, "or in the heads of Departments."

I have thus given all the authorities which I deem to be necessarily applicable to this case.

It is conceded by the Government that there is no statute of the United States creating the offense of official misconduct, and that there are no common law offenses against the United States; but that while this is, undoubtedly, the general rule, it does not apply in the District of Columbia, by reason of the fact that the District of Columbia upon its cession partook of the common law of its parent, the State of Maryland, which State had adopted the common law and also a considerable part of the Statute law of England; and that the common law of England, in all its branches both civil and criminal, remains to-day the law of the District of Columbia And although not an offense when committed by a Federal officer in any of the States of the Union, nor in any territory or any other ceded district under the exclusive jurisdiction of the United States

461 that it is an offense against the United States in the District of Columbia. In support of that proposition several decisions of the Supreme Court of the District of Columbia were cited;

among them was the Tyner case; so strenuously relied upon by the Government. But the Tyner case has no application to the case at bar; for in the Tyner case, there was an affirmative fraudulent act—the juggling with and substitution of false reports, and not a mere disclosure of the contents of a true report.

And the following propositions of law are here presented in behalf of the Government:

I.

Section 5440 is aimed at conspiracies which are intended either to

(1) Defraud the United States in any manner for *for* any purpose,

or to

Commit an offense against the United States.

II.

The words "to defraud the United States in any manner or for any purpose," mean more than to deprive the United States of money or of material value; they extend to any willful or corrupt misconduct of a public servant, in violation of his lawful duty, which operates to impair the administration of the public service.

462

III.

The offense of misconduct in office is an offense against the United States in the District of Columbia, independently of a statute defining the crime.

Carried to its logical result, would it not follow that for anything wrongfully done by any employee of the government, whether in the highest or the lowest position; for *for* some trivial act of misconduct, by him committed in the District of Columbia, or should any such employee agree with some other persons to do anything, or omit to do anything, however unimportant, which might be considered to be inconsistent with the duties of the position held by him must be adjudged to be guilty of an offense against the United States, and to have thereby defrauded the United States, and so rendered himself liable to be apprehended in San Francisco, or Alaska, or some other distant part of our vast country, and brought in custody to the District of Columbia, to be tried for such offense—although the offense of misconduct is nowhere mentioned in any Act of Congress.

I cannot agree that any greater power exists in the District of Columbia than in the States of the Union.

After a careful examination of the authorities and the fullest consideration of this case I find that the facts alleged against these defendants, do not constitute a crime under section 5440. Nothing set out in the indictment set forth any offense which is made an offense by law; and the only conclusion I can come to is that these defendants are entitled to be discharged. They must therefore be discharged.

463 To the Marshal of the United States for the Southern District of New York, and to his deputies or either of them:

Whereas, at a circuit court of the United States of America for the Southern District of New York in the second district, begun and held at the Borough of Manhattan in the City of New York, within and for the district of the circuit aforesaid, on the 2d Wednesday of May, in the year of our Lord 1908, the grand jurors in and for the said district and circuit brought into said court a true bill of indictment against Frederick A. Peckham and another, for having on the 31st day of May, 1905, at the city of Washington in the District of Columbia, unlawfully promised and offered to give to one Edwin S. Holmes, Jr., a certain share, towit: A sum equal to one-quarter of whatever moneys they the said Moses Haas and Frederick A. Peckham and the said Louis C. Van Riper or either of them should acquire through speculation in cotton based upon information to be furnished by the said Edwin S. Holmes, Jr., to them, which information was to be contained in the cotton crop report to be issued in the month of June then next ensuing. All then and there contrary to the form of the statute of the United States in such cases made and provided, as by said indictment now remaining on
464 file and of record in said court may more fully appear; to which indictment the said Frederick A. Peckham has not yet appeared or pleaded; now, therefore, you are hereby commanded in the name of the President of the United States of America to apprehend the said Frederick A. Peckham, and him bring before the said court at the U. S. Court, Post Office Building, in the City of New York, to answer the indictment aforesaid.

Witnesseth: The Honorable Melville W. Fuller, Chief Justice of the United States, at the Borough of Manhattan, in the City of New York, the 29th day of May in the year of our Lord, 1908.

JOHN A. SHIELDS, *Clerk.*

HENRY L. STIMSON,
U. S. Attorney.

Endorsement: United States Circuit Court, United States of America, Against Frederick A. Peckham, Bench Warrant, Henry L. Stimson. I hereby depute Doonan to execute the within writ. William Henkel, U. S. Marshal. May 29th, 1908.

June 1st, 1908, Frederick A. Peckham, in court and arraigned. Thomas I. Chatfield, U. S. Judge.

Defendant discharged on bail, June 1st, 1908, John A. Shields, U. S. Commissioner.

465 To the Marshal of the United States for the Southern District of New York, and to his deputies or either of them.

Whereas, at a circuit court of the United States of America for the Southern District of New York, in the second district, begun and held at the Borough of Manhattan in the City of New York, within and for the district of the circuit aforesaid, on the 2d Wednesday of May, in the year of our Lord 1908, the grand jurors in and for the said district and circuit brought into said court a true bill of

indictment against Frederick A. Peckham and another, for having on the 31st day of May, 1905, at the city of Washington in the District of Columbia, unlawfully promised and offered to give to one Edwin S. Holmes, Jr., a certain share, to wit: A sum equal to one-quarter of whatever moneys they the said Moses Haas and Frederick A. Peckham and the said Louis C. Van Riper or either of them should acquire through speculation in cotton based upon information to be furnished by the said Edwin S. Holmes, Jr., to them, which information was to be contained in the cotton crop reports to be issued in the month of June then next ensuing. All then and there contrary to the form of the statutes of the United States in such cases made and provided, as by said indictment now remain-
466 ing on file and of record in said court may more fully appear; to which indictment the said Frederick A. Peckham has not yet appeared or pleaded; now, therefore, you are hereby commanded in the name of the President of the United States of America to apprehend the said Frederick A. Peckham, and him bring before the said court at the U. S. Court, Post Office Building, in the City of New York, to answer the indictment aforesaid.

Witnesseth: The Honorable Melville W. Fuller, Chief Justice of the United States, at the Borough of Manhattan, in the City of New York, the 29th day of May, in the year of our Lord, 1908.

JOHN A. SHIELDS, *Clerk.*
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Defendant discharged on bail, June 1st, 1908, John A. Shields, U. S. Commissioner.

467 Circuit Court for the United States, for the Southern District of New York.

UNITED STATES
vs.
MOSES HAAS AND FREDERICK A. PECKHAM.

Indictment.

Conspiracy to Commit and Offense Against the U. S.

Rev. Stat. Sec. 5440, Sec. 5451.

1 Count.

468 In the Circuit Court of the United States of America, for the Southern District of New York, of the May Term, in the Year Nineteen Hundred and Eight.

SOUTHERN DISTRICT OF NEW YORK, *ss*:

The Grand Jurors for the United States of America empaneled and sworn in the Circuit Court of the United States for the Southern District of New York, and inquiring for that district, upon their oath present:

That in the administrative arrangement of the business of the Department of Agriculture of the said United States on and before the thirty-first day of May, in the year nineteen hundred and five, there was, and thence hitherto there has been, a bureau designated and known as the Bureau of Statistics; and that during the time and times aforesaid the said Bureau was under the management of an officer and employee of the said United States and of the said Department of Agriculture designated and known as statistician and as chief of the Bureau of Statistics; and that during the time and times aforesaid there were in the said Bureau other officers and employees of the said United States and of the said Department of Agriculture, one of whom was designated and known as associate statistician and another of whom was designated and known as assistant statistician and as assistant chief of the Bureau of Statistics; and that
469 during the time and times aforesaid whenever the said statistician was absent from his said office, the said Bureau was under the management of the said associate statistician who acted in the place and stead of said statistician as chief of said Bureau.

And that during the time and times aforesaid the said statistician with the aid and assistance of said associate statistician and of the other officers and employees of the said United States employed in said Bureau, and in the absence of the said statistician, the said associate statistician with the aid and assistance of the other officers and employees aforesaid of said Bureau, was charged with the duty of preparing during certain months in each year certain reports upon the conditions of certain of the crops grown and raised in the United

States, which reports became known as and were called crop reports, and that each of said crop reports was by law required to embrace statements of the conditions of the crops therein mentioned by States of the said United States, with such explanations comparisons and information as might be useful for illustrating the matter contained in said reports, and that each of such reports was required by law to be submitted to and officially approved by the Secretary of Agriculture before being issued or published.

That each of said reports was prepared by the said statistician or the said associate statistician in the manner aforesaid, from
470 certain information collected by the said Bureau from divers sources approved by the said Bureau; amongst others being certain correspondents of the said Bureau of Statistics residing in those parts of the United States where were grown the particular crops upon which they furnished information, and who were persons having special knowledge upon the subject, and certain employees of the said Bureau, known as Statistical Agents, and certain other expert employees of the said Bureau, whose duty it was to travel throughout the United States and ascertain the conditions of the said crops.

And that during the time and times aforesaid whenever the said statistician or the said associate statistician had as aforesaid prepared any of said reports, he, the said statistician, or the said associate statistician, as the case might be, in accordance with the requirement of law last aforesaid submitted the said report so prepared to the Secretary of Agriculture for the latter's official approval; and that whenever any of said reports was so submitted by said Secretary of Agriculture for his official approval, he, the said Secretary of Agriculture in the usual course of business of his said department, and relying upon the proper performance of his duty in the preparation of said report by the said statistician or by the said associate statistician, as the case might be, officially approved the same; and that after such official approval by the said Secretary of Agriculture thereof,
471 and not until such approval was given, each of said reports was issued and published by the said Department of Agriculture.

And that during the time and times aforesaid, the said crop reports were prepared, approved, and issued and published for the purpose of diffusing the information therein contained among the people of the United States, and that said crop reports were prepared at great expense to the said United States and were to be fair, impartial, correct and accurate; and the said crop reports and each of them upon their issuance and publication after being submitted to and officially approved by the Secretary of Agriculture as aforesaid, did affect to a greater or less extent the market price of the several crops mentioned therein.

That during the time and times aforesaid a custom and practice prevailed in the said Department of Agriculture established and sanctioned by the said Secretary, under which the giving out to the public of any information collected by the said Bureau of Statistics or its said officers or its said employees, to be used in the preparation of

or to be contained in any of said crop reports, was prohibited, and the keeping of such information secret was required, except such information as was contained in said crop reports when and after the same had been officially issued and published. And that during the time and times aforesaid it was the duty of the said statistician and of the said associate statistician and said other officials
472 and employees aforesaid of the said Bureau of Statistics to prepare a true and accurate report upon each of the said crops, from the information as to said crops obtained as aforesaid, and without regard to the influence which any such report might have upon the market price of the crop therein mentioned.

And that during the time and times aforesaid the said statistician and the said associate statistician and the other officers and employees aforesaid of the said Bureau of Statistics were charged with the duty of honestly and carefully guarding and keeping secret and of not divulging to any person not employed in or connected with said Bureau of Statistics any information acquired by him or them in the course of preparing and assisting in preparing the said crop reports and in collecting statistics and compiling statistical matter for use in the preparation of said crop reports, or any of the matters and things and other information which might be contained in any of said crop reports, until said crop reports had been prepared, officially approved, and issued and published as aforesaid, and thereafter said duty of so maintaining secrecy as aforesaid continued save and except as to the matters and things so officially made public in said reports.

And that among the said crop reports so prepared by the said statistician with the aid and assistance of said associate statis-
473 tician and said other officers and employees of the said Bureau of Statistics, and in the absence of said statistician, so prepared by the said associate statistician with the aid and assistance of said other officers and employees of the said Bureau of Statistics as aforesaid, and so submitted to and officially approved by the said Secretary of Agriculture as aforesaid, was a report upon the cotton crop of the United States, which became known as and was called the cotton-crop report, and which said cotton crop report during the time and times aforesaid was issued and published on or about the third day of each of the months of June, July, August, September, October and December in each year.

That on the sixteenth day of November, in the year nineteen hundred and three, and thence continuously until the ninth day of June, in the year nineteen hundred and five, one Edwin S. Holmes, Junior, held and occupied the office of and was such associate statistician in the said Bureau of Statistics in the Department of Agriculture, and as such was an officer of the United States and a person acting for and on behalf of the United States in an official function under and by authority of the said Department and Bureau, and as such associate statistician the said Edwin S. Holmes, Junior, was during the period last aforesaid charged with the duty of aiding and assisting the said statistician in the preparation of said crop reports, including said cotton-crop report, and, in the absence
474 of the said statistician from his office, the said Edwin S. Holmes, Junior, as such associate statistician was during the

period last aforesaid charged with the duty of preparing with the aid and assistance of said other officers and employees of said Bureau as aforesaid, all of the said crop reports, including the said cotton-crop reports as aforesaid, and that during the period last aforesaid, in the performance of his duties as said associate statistician in assisting the said statistician in the preparation of said crop reports, including said cotton-crop reports, and, in the absence of the said statistician, in the performance of his duties in preparing said crop reports, including the said cotton-crop reports, he, the said Edwin S. Holmes, Junior, did before the official approval and issuance and publication of each of said crop reports, including the said cotton-crop reports, acquire and have knowledge of the statistics and statistical matter from which the said crop reports, including said cotton-crop reports, were prepared, and of the matters and things and other information which were to be contained in each of said crop reports, including said cotton-crop reports.

And that during the period last aforesaid it was the duty of said Edwin S. Holmes, Junior, as such associate statistician, whenever he prepared or assisted in preparing any of said reports, to prepare and assist in preparing a true and accurate report, from the information as to said crops obtained as aforesaid, and without regard to the effect which such reports might have upon the market price of
475 the crop therein mentioned, and honestly and carefully to guard and keep secret and not to divulge to any person not employed in or connected with said Bureau of Statistics, any of the said statistics and statistical matter and information from which said crop reports, including said cotton-crop reports, were to be prepared, and of the matters and things and other information which were to be contained in any of said crop reports, including said cotton-crop reports, knowledge of which was so, as aforesaid, acquired by him, the said Edwin S. Holmes, Junior, as such associate statistician, until the said reports had been prepared, officially approved and issued and published as aforesaid, and it was the duty of the said Edwin S. Holmes, Junior, as such associate statistician, to thereafter honestly and carefully guard and keep secret and not divulge to any person not employed in or connected with said Bureau of Statistics any of the statistics and statistical matters and things and other information last aforesaid, knowledge of which was so, as aforesaid, acquired by him, except such matters and things and other information as were included in and officially made public in said reports.

All and singular of which the premises and several premises aforesaid, in so far as they were then existent, were known to a certain Frederick A. Peckham and to a certain Moses Haas, at the time of the commission by them of the offense hereinafter set forth,
476 and to a certain Lewis C. Van Riper.

That on the thirty-first day of May, in the year nineteen hundred and five, in the City of New York and the Southern District of New York, said Moses Haas and said Frederick A. Peckham unlawfully did conspire, combine, confederate and agree together with said Lewis C. Van Riper, who is not made a defendant herein, to commit an offense against the United States; that is to say, the offense of promising, offering and giving to an officer of the United States,

and a person acting for and on behalf of the United States in an official function under and by virtue of a certain department and office of the government thereof; that is to say, to the said Edwin S. Holmes, Junior, associate statistician, of the said Bureau of Statistics as aforesaid, a sum of money, the amount of which is to the Grand Jurors aforesaid unknown, to induce him, the said Edwin S. Holmes, Junior, to do certain acts in violation of his lawful duty, that is to say, to induce him, the said Edwin S. Holmes, Junior, unlawfully and in violation of the said duty of him, the said Edwin S. Holmes, Junior, as such associate statistician, honestly and carefully to keep secret all statistics and statistical matter and information knowledge of which was acquired by him as aforesaid as such associate statistician, and in advance of the official issue and publication of the said cotton-crop report, which was to be issued, as hereinbefore set forth, in the month of June next ensuing, and in advance
477 of the time when the matter and information contained in such cotton-crop report could lawfully be made public, to furnish, in so far as in him the power lay, to the said Moses Haas and the said Frederick A. Peckham and the said Lewis C. Van Riper, the statistics, matter and information which were to be contained in said report, knowledge of which was, as aforesaid, acquired by said Edwin S. Holmes, Junior in the performance of his duty as such associate statistician.

Overt Acts.

1. And the Grand Jurors aforesaid, upon their oath aforesaid, do further present, that in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said Moses Haas, at the City of Washington, in the District of Columbia, on the said thirty-first day of May, in the year nineteen hundred and five, unlawfully did promise and offer to give to the said Edwin S. Holmes, Junior, a certain share, to wit, a sum equal to one-fourth of whatever moneys they, the said Moses Haas and Frederick A. Peckham, and the said Lewis C. Van Riper or either of them should acquire through speculations in cotton based upon information to be furnished by the said Edwin S. Holmes, Junior, to them, which information was to be contained in the cotton crop report to be issued in the month of June then next ensuing.

478 2. And the Grand Jurors aforesaid, upon their oath aforesaid, do further present, that further in pursuance of the said unlawful conspiracy, combination, or confederation and agreement, and to effect the object of the same, the said Moses Haas unlawfully did meet and confer with the said Lewis C. Van Riper at the City of New York, in said Southern District of New York, on the said thirty-first day of May, in the year nineteen hundred and five.

3. And the Grand Jurors aforesaid, upon their oath aforesaid, do further present, that further in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said Moses Haas afterwards, to wit, on the first day of June, in the year nineteen hundred and five, unlaw-

fully did journey from said City of New York, in the said Southern District of New York, to the said City of Washington, in said District of Columbia.

4. And the Grand Jurors aforesaid, upon their oath aforesaid, do further present, that further in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said Moses Haas afterwards, to wit, on the said first day of June, in the year nineteen hundred and five, unlawfully did obtain from the said Edwin S. Holmes, Junior, at the said City of Washington, in said District of Columbia, certain information which was to be contained in said cotton crop
479 report to be issued in said month of June, nineteen hundred and five, and which had been acquired by the said Edwin S. Holmes, Junior, in the performance of his duties as such associate statistician.

5. And the Grand Jurors aforesaid, upon their oath aforesaid, do further present, that further in pursuance of the said unlawful conspiracy, combination confederation and agreement, and to effect the object of the same, the said Moses Haas, at the said City and Southern District of New York, on the said second day of June, in the year nineteen hundred and five, unlawfully did communicate the said information so obtained as last aforesaid by him from the said Edwin S. Holmes, Junior, to the said Lewis C. Van Riper.

And so the Grand Jurors aforesaid, upon their oath aforesaid, do say, that the said Moses Haas and the said Frederick A. Peckham, at the time and place and in manner and form aforesaid, unlawfully did conspire together, and with others, to commit an offense against the United States, and did each do acts to effect the object of the said conspiracy, against the peace and dignity of the United States, and contrary to the form of the Statute of the same in such case made and provided.

HENRY L. STIMSON,
United States Attorney.

480 (Endorsed:) U. S. Circuit Court.—The United States of America vs. Moses Haas and Frederick A. Peckham.—Indictment. Conspiracy to commit an offense against the United States.—U. S. Rev. Stat. Secs. 5440, 5451.—Henry L. Stimson, U. S. Attorney.—A True Bill. John E. Holahan, Foreman.—U. S. Circuit Court, Southern District of N. Y., Filed May 29, 1908, John A. Shields, Clerk.

481 In the Circuit Court of the United States of America for the Southern District of New York, of the May Term, A. D. 1908.

SOUTHERN DISTRICT OF NEW YORK, ss:

The Grand Jurors for the United States of America, empaneled and sworn in the Circuit Court of the United States for the Southern District of New York, and inquiring for that district, upon their oath, do present

That before and during the three years last past the United States, through the Department of Agriculture and a certain bureau of that department, to wit, the Bureau of Statistics, has exercised the governmental function of acquiring and diffusing among the people of the United States useful information on subjects connected with agriculture, including the subject of cotton; that in acquiring such information pertaining to cotton the United States, through the said department and bureau, has made use of divers agencies, to wit, among others correspondence with cotton planters and dealers in and ginners of cotton, through employees and agents of the said department and bureau located in the several States where cotton is grown, and through special investigations in the field by employees and agents of the said department and bureau; and that in diffusing the said information pertaining to cotton the United States has issued, on or near the third day of each of the months of June, July, August, September, October and December in each year crop reports embracing statements, based upon the information so acquired, of the conditions of the cotton crop, by States, in the United States, with such explanations, comparisons, and information as might be useful for illustrating that matter, which said cotton-crop reports have been by law required to be submitted to and officially
482 approved by the Secretary of Agriculture before so being issued or published; and that under the practice, custom and regulation of the said department established and sanctioned by the said Secretary of Agriculture, no officer or employee thereof to whom such information might come by reason of his office or employment has been permitted to issue, publish or divulge to unauthorized persons, and all such officers and employees have been prohibited from issuing, publishing or divulging to unauthorized persons, any such information so acquired as aforesaid, or any such cotton-crop report, or any information indicating the probable contents or character of the same, in advance of its official issuance and publication, or without its first being submitted to and officially approved by the said Secretary.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present, that Moses Haas, Edwin S. Holmes, Junior, and Frederick A. Peckham, each late of the said Southern District of New York, on the thirty-first day of May, in the year of our Lord one thousand nine hundred and five, at and within the said Southern District of New York unlawfully did knowingly conspire, combine, confederate and agree together, and with one Lewis C. Van Riper, who is not made a defendant herein, to defraud the United States of and concerning its governmental function in the matter of issuing and publishing the cotton-crop report to be issued and published by the said department and bureau in the then next succeeding month of June, and of its right to administer an intelligent and honest service in that behalf in the interests of the people of the United States, to be accomplished by the means and methods and under the circumstances and conditions now here set forth and described, that is to say:

The said Edwin S. Holmes, Junior, before and on the day
483 last aforesaid, was an officer and employee of the said department and bureau, to wit, associate statistician thereof; and a portion of the information upon which the said cotton crop report was to be based, and which had been acquired by the said department and bureau in the manner aforesaid, and indicated the probable contents and character of the said report, had come and was known to the said Edwin S. Holmes, Junior, in his capacity as such officer and employee; and thereafter, and before the time of the official issuance and publication of the said report, other like information would come to and be known to the said Edwin S. Holmes, Junior, in his said capacity.

The said Frederick A. Peckham, Moses Haas and Lewis C. Van Riper, who then and there were neither officers nor employees either of the said department or of the said bureau, and who then and there were persons not in any manner authorized to have or know the information last aforesaid, or be informed as to the probable contents or character of the said crop report in advance of its said official issuance and publication, or without such report first being submitted to and officially approved by the said Secretary, and who well knew all the premises in this indictment above set forth, were thereafter, and in advance of the said official issuance and publication of the said cotton-crop report, to obtain and receive from the said Edwin S. Holmes, Junior, and the said Edwin S. Holmes, Junior, also then well knowing the said premises, was to give and divulge to them the said Frederick A. Peckham, Moses Haas and Lewis C. Van Riper information which as aforesaid had and would come and be known to him the said Edwin S. Holmes, Junior, in his said capacity as an officer and employee of the said department and bureau, and this without the said cotton-crop report being first submitted
484 to and officially approved by the said Secretary of Agriculture; it being the design and intention of the said Frederick A. Peckham, Moses Haas, Edwin S. Holmes, Junior, and Lewis C. Van Riper in so doing to make use of the said information, before the lawful issuance and publication of the said report, for their pecuniary benefit, in speculating in cotton, in view of the probable effect upon the market price of that commodity which the subsequent lawful issuance and publication of the said cotton-crop report would have, and in other ways to the said Grand Jurors unknown.

Overt Acts.

1. And the Grand Jurors aforesaid, upon their oath aforesaid, do further present, that in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said Moses Haas, at the District of Columbia, on the said thirty-first day of May, in the year of our Lord nineteen hundred and five, unlawfully did promise and offer to give to the said Edwin S. Holmes, Junior, a certain share of whatever moneys, they, the said Moses Haas and Frederick A. Peckham and the said Lewis C. Van Riper, or either of them, should acquire through specula-

tions in cotton based upon information to be furnished by the said Edwin S. Holmes, Junior, to them, which information had been or should be acquired by the said Edwin S. Holmes, Junior, in his official capacity as to the probable contents of the cotton-crop report to be issued in the month of June then next ensuing.

2. And the Grand Jurors aforesaid, upon their oath aforesaid, do further present, that further in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said Moses Haas unlawfully did meet and confer with the said Lewis C. Van Riper at the City of New York, in the said Southern District of New York, on the said
485 thirty-first day of May, in the year of our Lord nineteen hundred and five.

3. And the Grand Jurors aforesaid, upon their oath aforesaid, do further present, that further in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said Moses Haas, afterwards, to wit, on the first day of June, in the year of our Lord nineteen hundred and five, unlawfully did journey from the said City of New York in said Southern District of New York to the said City of Washington, — said District of Columbia.

4. And the Grand Jurors aforesaid, upon their oath aforesaid, do further present, that further in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said Moses Haas, afterwards, to wit, on the said first day of June, in the year nineteen hundred and five, unlawfully did obtain from the said Edwin H. Holmes, Junior, at said District of Columbia, certain information which was to be contained in said cotton-crop report to be issued in said month of June, nineteen hundred and five, and which had been acquired by the said Edwin C. Holmes, Junior, in the performance of his duties as such associate statistician.

5. And the Grand Jurors aforesaid, upon their oath aforesaid, do further present, that further in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said Moses Haas at the said City and Southern District of New York on the said second day of June, in the year nineteen hundred and five unlawfully did communicate the said information so obtained as last aforesaid by him from the said Edwin S. Holmes, Junior, to the said Lewis C. Van Riper.

486 6. And so the Grand Jurors aforesaid, upon their oath aforesaid, do say, that the said Moses Haas, Edwin S. Holmes, Junior, and Frederick A. Peckham, at the time and place and in manner and form aforesaid, unlawfully did conspire together, and with others, to defraud the United States, and did each do acts to effect the object of the said conspiracy; against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

HENRY L. STIMSON,
United States Attorney

(Endorsed:) U. S. Circuit Court.—The United States of America, vs. Edwin S. Holmes, Jr., Moses Haas and Frederick A. Peckham.—Indictment. Conspiracy to defraud the United States.—U. S. Rev. Stat. Sec. 5440.—Henry L. Stimson, U. S. Attorney. A True Bill. John E. Holahan, Foreman.—U. S. Circuit Court, Southern District of N. Y. Filed May 29, 1908. John A. Shields, Clerk.

487 United States Circuit Court, Southern District of New York.

UNITED STATES
vs.
MOSES HAAS and FREDERICK A. PECKHAM.

Demurrer.

NASH ROCKWOOD,
Attorney for Defendants.

Office and Post Office Address: 378 Broadway, Saratoga Springs, N. Y.

Copy Rec'd June 19 08.
HENRY L. STIMSON,
U. S. Atty.

488 United States Circuit Court for the Southern District of New York.

UNITED STATES
vs.
MOSES HAAS and FREDERICK A. PECKHAM.

The defendants Moses Haas and Frederick A. Peckham, above named, hereby do, and each of them does, demur to the indictment presented by the last Grand Jury, filed May 29, 1908, charging them with the crime of conspiracy to commit an offence against the United States, on the following grounds:

First. That the acts charged in said indictment do not constitute a crime.

Second. That the acts charged in the indictment do not constitute the crime charged and that no crime known to the law is in fact charged.

Third. That the acts concerning which defendants are alleged to have conspired do not constitute a criminal offense, and there is no allegation that any crime was committed.

Fourth. That the facts constituting the alleged crime are
489 not set forth with certainty as required by law.

Fifth. That the act concerning which defendants are charged with having conspired does not constitute a violation of law but merely a violation of the rule of a department.

Wherefore, the defendants ask judgment that they and each of them be dismissed and discharged from the premises specified in said indictment.

Dated, June 18, 1908.

NASH ROCKWOOD,
Attorney for Defendants Moses Haas and Frederick A. Peckham.

Office and Post Office Address: 378 Broadway, Saratoga Springs, N. Y.

490 United States Circuit Court for the Southern District of New York.

UNITED STATES
vs.
EDWIN S. HOLMES, JR., MOSES HAAS and FREDERICK A. PECKHAM.

The defendants Moses Haas and Frederick A. Peckham, above named, hereby do, and each of them does, demur to the indictment presented by the last Grand Jury, filed May 29th, 1908, charging them with the crime of conspiracy to defraud the United States, upon the following grounds:

First. That the acts charged in said indictment do not constitute a crime.

Second. That the acts charged in said indictment do not constitute the crime charged.

Third. That there are no facts alleged showing that the United States was defrauded by any wrongful acts of defendants.

Fourth. That sufficient facts are not shown to establish the charge of conspiracy, in that the act concerning which defendants are charged to have conspired is not a criminal offense known to
491 the law.

Fifth. That the facts constituting the alleged crime are not stated with certainty as required by law.

Wherefore, the defendants ask judgment that they and each of them be dismissed and discharged from the premises specified in said indictment.

Dated, June 18, 1908.

NASH ROCKWOOD,
Attorney for Defendants Moses Haas and Frederick A. Peckham.

Office and Post Office Address: 378 Broadway, Saratoga Springs, N. Y.

492 United States Circuit Court, Southern District of New York.

UNITED STATES
vs.
MOSES HAAS et al.

Opinion of Hough, D. J., on Demurrers.

493 Opinion of Hough, D. J., on Demurrers.

United States Circuit Court, Southern District of New York.

No. 307. No. 308. No. 309. No. 310.

UNITED STATES
vs.
MOSES HAAS et al.

On Demurrer by Haas to four indictments found against him jointly with others not joining in those demurrers.

Nash Rockwood for Haas.
H. L. Stimson, U. S. Att'y; J. C. Atkins, G. H. Dorr and C. A. Roberts, for the United States.

HOUGH, *D. J.*:

At the times in the indictments mentioned one Holmes was an employee of the United States, acting as assistant statistician in the Department of Agriculture. His duties were to consider and tabulate (or assist in so doing) the reports in cotton planting, and cotton crop conditions furnished to the department by its local reports; and thus prepare (or assist in preparing) the reports on cotton furnished to the public under governmental authority.

Such or similar reports on agricultural conditions have
494 been furnished by the proper department ever since the establishment of the Department of the Interior. They were in general terms authorized by the Statute (May 15, 1862) establishing that Department.

This function of the Interior Department passed to the then created Department of Agriculture in 1892, and both before and since that date Congress has specifically appropriated money for the collection and publication of crop reports. By 27 Stat. 76, it is declared that monthly crop reports must be submitted to the Secretary of Agriculture "who shall officially approve the report before it is issued or published."

During all the time referred to in the indictments it was the written and published rule or regulation of the Agricultural Department (of which judicial notice is taken) that no crop information should be published or divulged by any subordinate without the written approval of a Bureau Chief,—which Holmes was not.

For the purpose of these demurrers, the substance of the indictments may be thus stated:—it is alleged that Haas, et al., agreed with each other and with Holmes that the latter should, (and he did) 1st give Haas et al., advance information concerning cotton, contrary to the rules and regulations aforesaid; 2nd Cause to be published (and he did publish) with official approval fraudulently obtained a false crop report; and 3rd that for these services Holmes should
495 receive a percentage of the gains of Haas et al., to be made in cotton speculation based upon their private information, or the public's misinformation, so as aforesaid obtained or brought about.

The indictments present this agreement between Haas Holmes et al., as a conspiracy under Rev. Stat. Sec. 5440 and such conspiracy is charged as being both to defraud the United States, and to commit an offense against the United States. They also present the corruption of Holmes, not only as one of the objects of the conspiracy, but as a substantive offense, i. e., violation of Rev. Stat. Sec. 5451.

Defendant's first proposition is that inasmuch as it is not shown that the United States was deprived of anything of value by the transactions recounted above, no indictment for conspiracy to defraud under Sec. 5440 will lie.

This subject I have recently examined in U. S. v. Morse 161 F. R. 429, and need only repeat my conviction that the subject is not open to further discussion in courts of first instance. The indictment charges a confederated effort to deprive the National Government of the right and privilege of proper service in the Department of Agriculture and that is enough.

It is next urged that in issuing crop reports, including cotton statements the United States was not exercising governmental functions. This contention is overruled in the statement of facts
496 above compiled from the indictments and public statutes.

Premising that a conspiracy under Sec. 5440, to commit an offense against the United States, presupposes that a statutory crime was intended by the conspirators, Haas finally argues that Sec 5451 could not have been violated either in intention or fact, because, (1) Holmes was not an "officer of the United States," 2nd Holmes was not "a person acting for or on behalf of the United States in any official function" inasmuch as collecting and disseminating information about cotton was not an official (i. *e.* governmental) function of the United States, and if the National Government could not exercise that function a fortiori the same could not be delegated to Holmes; 3rd. Holmes was not prohibited from doing what he did by any statute, consequently he did not commit any "offense against the United States," and it follows that it was not such offense to procure him to commit non-criminal acts; and 4th. The promise of contingent gain made to Holmes, was not "money or other thing of value," nor a "contract, undertaking, obligation, gratuity, or security, for the payment of money or for the delivery or conveyance of anything of value." wherefore though Holmes may have done wrong and Haas counselled or procured him to do so, the procurement was not in the way prescribed by Sec. 5451 and consequently no one so acting

can be reached either directly under Sec. 5451, nor indirectly under Sec. 5440.

497 The premise of these contentions is admitted,—since there are no common law offenses against the United States the offense mentioned in Sec. 5440 must be statutory.

(1) Whether Holmes was an "officer" need not be decided.

(2) It is held that Holmes was a person acting for the United States in an official function for the reasons above given.

(3) Let it be assumed for the sake of argument that Holmes commit-ed no crime (i. e., violated no statute) when he perpetrated any or all of the moral wrongs set forth in the indictments.

But violating "lawful duty" and breaking statutes are not synonymous expressions, and defendants' argument passes too lightly over the language of Sec. 5451, which does make it a crime to induce one acting for the United States to do any act in violation of his lawful duty. It follows that Haas' contention can only be supported by holding that "lawful duty" means duty imposed by statute and nothing else. This is repugnant to common (and correct) usage, the phrase "lawful duty" is amply wide to cover duty imposed and regulated by a lawful superior.

In this sense it was Holmes' lawful duty to obey the rules and regulations of his Department duly promulgated and known to him, nor is it material that such regulations should be in writing.

498 Citations of cases like U. S. v. Keibel, 157 F. R. 396, to show that violating a departmental rule is not a crime do not advance the argument at all, let it be admitted that such is the law, but that does not show or tend to show that Congress cannot make it a crime to incite or cause another to violate such rule. This question however is not fairly presented in this case, and need not be pursued further than to note a query as to the correctness of the ruling in U. S. v. Matthews, 146 F. R., 306.

The question really is what does "lawful duty" mean, and was it Holmes' "lawful duty" to refrain from doing what the indictments assert he did. It would be a strange government wherein the conduct of officials of every grade, was regulated in minute detail by statute. "Of necessity usages have been established in every department of the government, which have become a kind of common law, and regulate the rights and duties of those who act within their respective limits." U. S. v. MacDaniel, 7 Pet. 1,—Benson v. Henkel, 198 U. S. 1.

The indictment avers that Holmes knew the rule of secrecy, and Haas knew it, and with that knowledge induced its violation. Whether Haas knew it or not, is I think immaterial, but that Holmes violated his lawful duty in yielding to temptation, seems to me especially clear.

(4) The promise to give or pay Holmes a share of profits if there were any, is clearly within the prohibition of Sec. 5451. Of

499 course the promise was unenforceable, because the consideration was grossly immoral, but the same objection would apply to a formal contract for the payment of a definite sum of money.

It may be noted that this statement of the agreement with Holmes is found only in the "overt acts" appended to the indictment proper. It is not necessary to set forth overt acts in an indictment for conspiracy and if set forth they cannot be resorted to in aid of the averments of the charging portions of the pleading, nor can they on demurrer be considered,—and for the same reason,—they are not strictly part of the indictment. They may, on motion to quash afford ground for setting aside the pleading,—but that point is not raised here.

No other point suggested in argument seems to me to need comment. The demurrers are overruled.

Aug. 28, 1908.

C. M. HOUGH, *D. J.*

(Endorsed:) U. S. Circuit Court, Southern District of N. Y.—United States vs. M. Haas, et al.—Four indictments 307-08-09-10. Opinion on Demurrers of Haas Argued Aug. 7, 1908.—U. S. Circuit Court, Southern District N. Y., Filed Aug. 31, 1908. John A. Shields.

500 U. S. Circuit Court, Southern District of New York.

Indictment No. 307.

UNITED STATES
vs.
FREDERICK A. PECKHAM & Others.

Indictment No. 310.

UNITED STATES
vs.
FREDERICK A. PECKHAM & Others.

Order.

Henry L. Stimson, United States Attorney, Attorney for U. S.

SIR: You will please take notice that an order of which the within is a copy, was this day duly entered in the within entitled action, in the office of the Clerk of the U. S. Circuit Court, S. D. N. Y.

Dated N. Y., Oct. 1, 1908.

Yours, etc.,

HENRY L. STIMSON,
U. S. Attorney, Attorney for Plaintiff.

To Nash Rockwood, Attorney for Def't, Moses Haas, 378 Broadway, Saratoga Springs, N. Y.

501 *Order.*

At a Stated Term of the United States Circuit Court held in and for the Southern District of New York, at the United States Court and Post Office Building, Borough of Manhattan, City of New York, Southern District of New York, on the 1st day of October, 1908.

Present: Hon. Charles M. Hough, United States District Judge, Holding Circuit Court.

No. 307.

UNITED STATES
vs.
FREDERICK A. PECKHAM, Impleaded with EDWIN S. HOLMES, JR., and MOSES HAAS.

Conspiracy to Defraud the United States, R. S., Section 5440.

No. 310.

UNITED STATES
vs.
FREDERICK A. PECKHAM, Impleaded with MOSES HAAS.

Conspiracy to Commit an Offense against the United States, R. S., Sections 5440 and 5451.

Frederick A. Peckham, one of the defendants above named, having on June 18th, 1908, withdrawn his plea of "Not Guilty" theretofore entered to each of the above entitled indictments and having filed a demurrer on said June 18th, 1908, to each of said indictments and said demurrers having duly come on to be heard at a Term of the United States Circuit Court, Southern District of New
502 York, on August 7, 1908, and after hearing Nash Rockwood, Esq., Attorney for said Frederick A. Peckham in support of said demurrers, and Henry L. Stimson, Esq., United States Attorney in opposition thereto,

Now, on motion of Henry L. Stimson, United States Attorney, it is,

Ordered and adjudged that said demurrers to the above entitled indictments be and the same hereby are in all respects overruled, and it is

Further ordered that the above named defendant, Frederick A. Peckham appear and plead to said indictments at a Term of the United States Circuit Court for the Southern District of New York, to be held at the United States Court and post office building, in said District at 11 a. m. on October 12, 1908.

(Sgd.) C. M. HOUGH,
United States District Judge
Holding Circuit Court.

503 United States Circuit Court, Southern District of New York.

No. 307.

UNITED STATES
vs.
FREDERICK A. PECKHAM, Impleaded with EDWIN S. HOLMES, JR., and MOSES HAAS

Conspiracy to Defraud the United States, R. S., Section 5440.

No. 310.

UNITED STATES
vs.
FREDERICK A. PECKHAM, Impleaded with MOSES HAAS.

Conspiracy to Commit an Offense against the United States, R. S., Section 5440 and 5451.

SIR: Please take notice that — a Stated Term of the United States Circuit Court in and for the Southern District of New York, to be held at the United States Court and Post Office Building, Borough of Manhattan, City of New York, in said Southern District, on the 12th day of October, at 11 a. m. or as soon thereafter as counsel can be heard, a motion will be made on the annexed affidavit of Henry L. Stimson, — for the Southern District of New York, and upon all the pleadings, papers and proceedings in the above entitled causes, for the consent of the said Circuit Court, that the United
504 States Attorney for the Southern District of New York proceed with proceedings for the removal of the defendant Frederick A. Peckham to the District of Columbia in accordance with provisions of revised statutes, section 1014.

Yours truly,

HENRY L. STIMSON,
United States Attorney for the Southern District of New York, Attorney for Plaintiff.

Office and Post Office Address, Room 50, Post Office Building, Borough of Manhattan, City of New York.

To Nash Rockwood, Esq., Attorney for Defendant Peckham, 378 Broadway, Saratoga Springs, N. Y.

Dated, New York, October 6th, 1908.

505 United States Circuit Court, Southern District of New York.

No. 307.

UNITED STATES
vs.
FREDERICK A. PECKHAM, Impleaded with EDWIN S. HOLMES, JR., and MOSES HAAS.

Conspiracy to Defraud the United States, R. S., Section 5440.

No. 310.

UNITED STATES
vs.
FREDERICK A. PECKHAM, Impleaded with MOSES HAAS.

Conspiracy to Commit an Offense against the United States, R. S., Section 5440 and 5451.

SOUTHERN DISTRICT OF NEW YORK,
County of New York, ss:

Henry L. Stimson, being duly sworn, says:

I am United States Attorney for the Southern District of New York.

The above entitled indictments against the defendants Frederick A. Peckham were presented to the Circuit Court of the United States for the Southern District of New York, on May 29, 1908. On June 1, 1908, defendant Frederick A. Peckham appeared in open Court and entered a plea of not guilty to each of said indictments, with leave to withdraw said plea and to demur to or move with
506 respect to each of said indictments, and on June 1, 1908, was admitted to bail. Thereafter on June 18, 1908, defendant Peckham withdrew said pleas of not guilty and filed a demurrer to each of the said indictments. Said demurrers came on for argument on August 7, 1908, and on October 1, 1908, and order was duly entered overruling each of said demurrers, and directing the defendant to appear *to* plead to each of said indictments on October 12, 1908.

I am informed by the United States Attorney for the District of Columbia that on May 29, 1908, two indictments were filed against the defendant, Frederick A. Peckham in the Supreme Court of the District of Columbia, being indictments Nos. 26086 and 26087. In indictment No. 26086 defendant Peckham is charged with conspiring with Edwin S. Holmes, Jr. and Moses Haas to defraud the United States in violation of provisions R. S. Section 5440, the gist of the charge being that the defendants conspired that Holmes, in violation of his duty as associate statistician of the Bureau of Statistics of the Department of Agriculture, should reveal to Haas and Peckham for speculative purposes information as to the prospective

contents of the Government Cotton Crop Report to be issued in the month of June 1905 in advance of its official publication, said information being acquired by Holmes in the course of his official duty.

507 In indictment No. 26087 the defendant Frederick A. Peckham is charged with conspiring with Moses Haas to commit an offense against the United States within the provision of R. S. Section 5440, the gist of the charge being that the defendants conspired to give to Edwin S. Holmes, Jr., associate statistician of the Bureau of Statistics of the Department of Agriculture, a sum of money to induce him to disclose to them the prospective contents of the cotton crop report of June 1905 in advance of its official publication and in violation of his lawful duty as associate statistician of said Bureau.

The defendant Edwin S. Holmes, Jr., I am informed, will be arraigned in Washington on indictment No. 26086 during the ensuing week.

On June 3, 1908, I received from the District Attorney of the District of Columbia certified copies of said indictments, with a request that I institute proceedings for the removal of the defendant Peckham to the District of Columbia in accordance with the provisions of R. S. Section 1014.

On June 29, 1908, I filed a complaint before United States Commissioner, John A. Shields, against said defendant Peckham, praying for his removal to the District of Columbia, based on indictments Nos. 26086 and 26087, and Commissioner Shields on said

508 date issued his warrant on said complaint. Said defendant Peckham was produced by counsel before Commissioner Shields and gave bail, it being understood that the proceedings for removal would not be pressed until after the determination of the demurrers of said defendant then pending with respect to said indictments pending in this District. Said proceedings before the Commissioner have been adjourned from time to time and are now set for October 12, 1908 at 2 p. m. Before proceeding further with these removal proceedings, which if successful before the Commissioner, will result in a request to a Judge of the District Court for a warrant for the removal of this defendant to the District of Columbia, I desire to secure the consent of the Circuit Court of this District to this course.

The indictments, both in this District and in the District of Columbia, which have been referred to above, relate to the so-called "cotton leak" matter. These particular indictments are based on transactions in May and June 1905, but the ground to be covered in the trial in both instances covers transactions during a considerable period of time. For the cases to be disposed of with economy of the time of Courts, juries and the Department of Justice, it is essential

509 either that Holmes should be removed to this District for trial with the defendant Peckham, or that the defendant Peckham be removed to Washington for trial with the defendant Holmes on the conspiracy indictments in which they are co-defendants. The District Attorney for the District of Columbia and officers of the Department of Justice, and members of the Attorney General's

staff resident in Washington have had charge of the investigation of this matter from its inception. Edwin S. Holmes, Jr., has already been tried once in the District of Columbia on an indictment growing out of the same general transaction, the trial resulting in a disagreement of the jury. This trial, I am informed, occupied about three weeks.

The criminal business of this District is of such volume and the assignments of the terms of Circuit Court for criminal work are such that it will probably be impracticable to bring these cases to trial in this District before October, 1909. I have received from the United States Attorney for the District of Columbia urgent request for the prosecution of the removal proceedings. I am informed by him that if the other defendants are promptly removed to Washington it would be his purpose to move for trial on the first of December 1908, the indictments against Holmes, Haas and Peckham.

It appears to be practicable to complete the trial of this defendant under the indictments pending in the District of Columbia
510 before he could in any event be brought to trial in this District.

I am in receipt of a request from the Attorney General to be transmitted by me to this Court, that the Circuit Court in this District yield for the time its jurisdiction of the defendant Peckham to the Supreme Court of the District of Columbia. A copy of the same is hereto annexed.

HENRY L. STIMSON.

Sworn to before me this 6th day of October, 1908.

[SEAL.] FREDERICK L. CAMPBELL,
Notary Public, Kings Co.

Cert. Filed in N. Y. Co.

511 Copy.

DEPARTMENT OF JUSTICE,
S. G. WASHINGTON, *October 5th*, 1908.

Hon. Henry L. Stimson, United States Attorney, Southern District of New York, New York.

SIR: On May 29th, 1908, there were returned into the Circuit Court of your District certain indictments against Theodore H. Price, Moses Haas, and Frederick A. Peckham, together with Edwin S. Holmes, Jr., charging them with conspiracy to defraud the United States and to commit offenses against the United States. At the same time, similar indictments were returned against these men in the Supreme Court of the District of Columbia. Holmes is a resident of Washington, while Price, Haas and Peckham are at present in the State of New York.

You will be good enough to request the Circuit Court of your District to consent to the removal of Messrs. Price, Haas and Peckham to Washington, for trial upon the indictments pending here, it being understood of course that should the trial here result in acquittal or conviction the indictments in New York will be dropped.

There are several reasons which lead me to make this
512 request of the Circuit Court.

1. The indictments charge a conspiracy on the part of the several defendants to cause to be issued at Washington by the Bureau of Statistics for the Department of Agriculture of false cotton crop reports, and that Holmes, who was then Associate Statistician of the Bureau of Statistics, was to furnish to his co-conspirators in advance of their official issue the information to be contained in the report. While, owing to the commission in your District of acts in pursuance of the conspiracy, the Court in your District has jurisdiction of the offense yet the conspiracy was in all probability actually formed in Washington. The false reports were prepared and issued here and the advanced information was given out here. The real situs of the crime then is the District of Columbia and the trials should therefore be had here.

2. The defendant Holmes has been arrested and is now awaiting trial on the indictments pending in the District of Columbia. There are two series of these indictments, one against Price, Haas and Holmes, and the other against Haas, Peckham and Holmes. It would be a great convenience and a vast saving to the Government to try the defendants together. Even this would necessitate
513 two trials, one in each series. If the non-resident defendants are not removed to Washington, four trials would be needed, two in Washington and two in New York.

3. The great number of witnesses on the part of the Government to establish these cases are residents of Washington and for the most part officers and employees of the Department of Agriculture. The Secretary of Agriculture and the Assistant Secretary of Agriculture are essential witnesses on the part of the Government. At the trial of Holmes, both the Secretary and the Assistant Secretary were on the stand several times, the Secretary himself being frequently recalled for further cross-examination. This could be easily done in a trial in Washington; but should these officials be required to attend a trial in New York, not only would the work of the Agricultural Department be seriously hampered but matters of State in which the Secretaries' advice should be desired might be interfered with.

The Statistician and the Assistant Statistician and many other officials of the Bureau of Statistics are also necessary witnesses, while the Associate Statistician would be required, on account of his familiarity with the case, to be in constant attendance at the trial. The former trial of Holmes alone lasted about three weeks. It would not be possible to find any three weeks in the year during which
514 the Bureau of Statistics would not issue, or be preparing to issue at least one crop report. Should the necessary witnesses in these cases be required to be in New York at the trial it would be practically impossible to issue such a report.

Again, at the trial of these cases a great number of the original records of the Department of Agriculture will be required as evidence. Many of these records are in constant use in the Department. The inconvenience to which the Department would be put by the placing of these records in evidence in a trial in Washington would be very

slight. It might be a very serious obstruction to the public business should it be necessary to take these records to New York.

Again, at a former trial of these cases it was a daily occurrence to call for additional records from the Department. This would be difficult should the trial take place in New York.

Respectfully, CHARLES J. BONAPARTE,
Attorney General.

515 United States Circuit Court, Southern District of New York.

No. 307.

UNITED STATES
vs.
MOSES HAAS, Impleaded with EDWIN E. HOLMES, JR., and FREDERICK A. PECKHAM.

Conspiracy to Defraud the United States. R. S., Section 5440.

No. 308.

UNITED STATES
vs.
MOSES HAAS, Impleaded with EDWIN S. HOLMES, JR., and THEODORE H. PRICE.

Conspiracy to Defraud the United States. R. S., Section 5440.

No. 309.

UNITED STATES
vs.
MOSES HAAS, Impleaded with THEODORE H. PRICE.

Conspiracy to Commit an Offense Against the United States. R. S., Section 5440 and 5451.

No. 310.

UNITED STATES
vs.
MOSES HAAS, Impleaded with FREDERICK A. PECKHAM.

Conspiracy to Commit an Offense Against the United States. R. S., Section 5440 and 5451.

516 NORTHERN DISTRICT OF NEW YORK.
County of Saratoga, ss:

Nash Rockwood, being duly sworn says:

I am the attorney for Frederick A. Peckham the defendant above named in two indictments.

In indictment No. 307 said Peckham is jointly indicted with Moses Haas and Edwin S. Holmes, Jr., charged with conspiracy to defraud the United States under the Revised Statutes Section 5440.

In indictment No. 310 above mentioned, said Peckham is indicted with Moses Haas, charged with conspiracy to commit an offense against the United States under Revised Statutes, Sections 5440 and 5451.

Said indictments, as I am informed and verily believe, were found against said Peckham and presented to the Circuit Court for the Southern District of New York on May 29, 1908.

As alleged in the affidavit of Henry L. Stimson, verified the 6th day of October, 1908, on the same day, to wit, May 29, 1908, certain indictments were filed against the said Peckham in the Supreme Court of the District of Columbia.

On or about June 1st, 1908, said Peckham appeared in open Court in the City of New York and entered a plea of "Not Guilty" to the said two indictments returned to the United States Circuit
517 Court for the Southern District of New York, and was given leave to withdraw said plea and to demur to or move with respect to each of said indictments as he might be advised, and on or about June 1st, 1908, said Peckham was admitted to bail in said United States Circuit Court.

Thereafter and on or about June 18th, 1908, said Peckham withdrew said plea of not guilty and filed a demurrer to each of the said two indictments, which demurrers came on for argument on or about August 7th, 1908, and were argued before Hon. Charles M. Hough, United States Judge, who subsequently overruled said demurrers; and on or about October 1st, 1908, an order was entered overruling said demurrers and directing said Peckham to appear and plead to each of said two indictments so found in the New York jurisdiction on October 12th, 1908.

Thereafter and on or about the 8th day of October, 1908, counsel for said Peckham was served with an affidavit and notice of motion returnable on the 12th day of October, 1908, at a stated term of United States Circuit Court, which motion was made by the United States Attorney for said Southern District for the consent of the said Circuit Court that the United States Attorney for the Southern District of New York be permitted to proceed with proceedings for the removal of said Peckham to the District of Columbia, in ac-
518 cordance with the provisions of Section 1014 of the Revised Statutes of the United States, and this affidavit is filed in opposition to said motion.

Previous to the making of said motion and after said Peckham had appeared in said United States Circuit Court, as aforesaid, and on or about June 29th, 1908, said United States Attorney for the Southern District of New York filed complaints before United States Commissioner John A. Shields of the Southern District of New York against said Peckham, praying for his removal to the District of Columbia for trial, based on the indictments found in that jurisdiction, and said Commissioner Shields, on or about said date, issued his warrant on said complaints. Thereupon said Peckham appeared

before said Commissioner and gave bail, and said matters are pending before said Commissioner Shields and now stand adjourned, as I am informed and verily believe, to November 4th, 1908.

Previous to the filing of said petition for the removal of said Peckham before said Commissioner Shields and previous to the making of this motion, the said United States Circuit Court for the Southern District of New York had attempted to acquire and exercise jurisdiction of the person of said Peckham and, before the making of this motion, had passed upon the validity of said indictments.

It is claimed on behalf of said Peckham that, as the in-
519 dictments found in the New York and Washington jurisdictions allege practically identical offenses, the United States Court for the Southern District of New York, having taken unto itself jurisdiction thereof, is without power to suspend the operation of this jurisdiction or to transfer the same to the Washington courts, the ruling of law contended for being that the Court which first gains or takes jurisdiction will retain it in order to end the controversy.

Said indictments so found in the District of Columbia are in substance identical with those so found in the Southern District of New York, except that in the former the offenses charged, namely, the alleged conspiracies, are charged to have occurred in the District of Columbia, while in the latter they are charged to have occurred in the City of New York. Indeed, the said indictment to commit an offense against the United States so found in the District of Columbia, is identical both in form and substance with that so found in the Southern District of New York, except that in the former the situs of said alleged conspiracy is charged to have been in the District of Columbia, while in the latter it is charged to have been in the City of New York; and the first three counts of the indictment for conspiracy to defraud the United States, so found in the District of Columbia, is likewise identical both in form and substance
520 with the indictment for said offense so found in the Southern District of New York, except that in the former again the situs of the alleged conspiracy is charged to have been in the District of Columbia, while in the latter it is charged to have been in the City of New York. The remaining counts to said indictment for conspiracy to commit offense so found in the District of Columbia obviously described the same identical alleged transaction as those charged in the first three counts thereof.

Said Peckham is a resident of Chicago in the State of Illinois, although he has been more or less in the City of New York for some years past, and claims that he is entitled to be tried by a jury of the Southern District of New York wherein the charges preferred against him in the said New York indictments are alleged to have been committed. And said Peckham submits that he should not be subjected to trial in a distant district where he does not reside, and where he is not known, or before a jury of such district; and said Peckham submits that he should not be put to the expense of taking his witnesses and counsel to Washington for trial before a foreign jury.

(Sd.) NASH ROCKWOOD.

Subscribed and sworn to before me this 19th day of October, 1908.

(Sd.) C. M. BARRETT,
Notary Public.

521 United States Circuit Court, Southern District of New York.

No. 307.

UNITED STATES
vs.
MOSES HAAS. Impleaded with EDWIN S. HOLMES, JR., and FREDERICK A. PECKHAM.

Conspiracy to Defraud the United States, R. S., Section 5440.

No. 308.

UNITED STATES
vs.
MOSES HAAS. Impleaded with EDWIN S. HOLMES, JR., and THEODORE H. PRICE.

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No. 309.

UNITED STATES
vs.
MOSES HAAS. Impleaded with THEODORE H. PRICE.

Conspiracy to Commit an Offense Against the United States, R. S., Section 5440 and 5451.

No. 310.

UNITED STATES
vs.
MOSES HAAS. Impleaded with FREDERICK A. PECKHAM.

Conspiracy to Commit an Offense Against the United States, R. S., Section 5440 and 5451.

522 SIR: Please take notice that the within order will be presented for settlement to Hon. Charles M. Hough, United States Judge at the office of the Clerk of the United States Circuit Court, United States Court and Post Office Building, Southern District of New York, on November 4th, 1908, at 10:30 A. M.

Yours, etc.,
HENRY L. STIMSON,
United States Attorney for the Southern District of New York, Attorney for the Plaintiff.

To Nicoll, Anabale & Lindsay, Esqs., Attorneys for Defendant Theodore H. Price.

Nash Rockwood, Esq., Attorney for Defendants Peckham & Haas.

Dated New York, October 31, 1908.

523 At a Stated Term of the United States Circuit Court, held in and for the Southern District of New York at the United States Court and Post Office Building in said Southern District on the — day of November, 1908.

Present: Hon. Charles M. Hough, U. S. Judge.

No. 307.

UNITED STATES
vs.
MOSES HAAS, Impleaded with EDWIN S. HOLMES, JR., and FREDERICK A. PECKHAM.

Conspiracy to Defraud the United States, R. S., Section 5440.

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UNITED STATES
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Conspiracy to Commit an Offense Against the United States, R. S., Section 5440 and 5451.

524 No. 310.

UNITED STATES
vs.
MOSES HAAS, Impleaded with FREDERICK A. PECKHAM.

Conspiracy to Commit an Offense Against the United States, R. S., Sections 5440 and 5451.

Motions having been made herein by the United States Attorney praying that the United States Circuit Court for the Southern District of New York consent that he proceed with proceedings for the removal of the defendants Moses Haas, Theodore H. Price and Frederick A. Peckham to the District of Columbia in accordance with provisions of the Revised Statutes Section 1014, and said motion having come on to be heard at a Stated Term of this Court on October 12, 1908, and on reading and filing the notices of motion of the United States Attorney with due proof of service appearing thereon, and the

affidavits of Henry L. Stimson, United States Attorney, in support of the motions, and after reading and filing the affidavits of Theodore H. Price, Moses Haas and Nash Rockwood in opposition thereto, and after hearing Goldthwaite H. Dorr, Assistant United States Attorney, in support of the motion and Delancey Nicoll, Esq.,
525 on behalf of the defendant Theodore H. Price in opposition thereto, and due deliberation having been had

Now, on motion of Henry L. Stimson, United States Attorney, it is Ordered, that said motions be and they hereby are granted.

(Sgd.) C. M. HOUGH, *U. S. D. J.*

526 UNITED STATES
vs.
FREDERICK A. PECKHAM.

Petition for Habeas Corpus.

Filed Oct. 2, 1905.

W. S. DOOLITTLE, *Clerk.*

527 *Petition.*

To Honorable George W. Ray, United States District Judge for the Northern District of New York:

The petition of Frederick A. Peckham herein respectfully shows:

That Frederick A. Peckham, the person in whose behalf the writ is applied for, is now imprisoned and restrained in his liberty;

That said prisoner is now confined in the custody of the United States Marshal for the Northern District of New York, in the County of Saratoga, New York, and the officer or person by whom he is so imprisoned and restrained is as follows: Elmer E. Belden, a deputy of the said Marshal of the United States for the Northern District of New York; that he has not been committed and is not detained by virtue of any judgment, decree, final order, process or mandate issued by a court or a judge of the United States, in a case where such courts or judges have exclusive jurisdiction under the laws of the United States or have acquired exclusive jurisdiction by the commencement of legal proceedings in such a court, or by virtue of the final judgment or decree of a competent tribunal of civil or criminal jurisdiction, or the final order of such a tribunal, made in a special proceeding, instituted for any cause, except to punish him for a contempt, or by virtue of an execution or other process issued upon such a judgment, decree or final order.

528 That the cause or pretense of such imprisonment and restraint, according to the best knowledge and belief of your petitioner, is:

Your petitioner was heretofore and on the 23d day of August, 1905, apprehended by the said Deputy United States Marshal and taken before Charles M. Davison, Esq., United States Commissioner, having an office at Saratoga Springs, Saratoga County, New York, and was then and there informed that an indictment had been found

against your petitioner by a Grand Jury of the Supreme Court of the District of Columbia, charging your petitioner with having committed a criminal act in that he was alleged in said indictment to have violated Section 5440, as amended, of the Revised Statutes of the United States of America. That your petitioner at said time was a stranger and summer guest at Saratoga Springs, N. Y., and was present there without friends to assist him in the matter of procuring bail or of carefully examining into said criminal charge with a view to fully advising your petitioner as to the proper course to pursue therein.

That said indictment was not read to your petitioner, but upon his request, after inquiry made, Nash Rockwood, Counsellor at Law, of Saratoga Springs, N. Y., at that time an entire stranger to your petitioner, was sent for, and your petitioner instructed said Rockwood to at once procure him to be admitted to bail, so that he could re-
529 turn to New York and consult with his friends and advisers concerning said matter.

That thereupon such proceedings were had before said United States Commissioner that your petitioner pleaded not guilty to the charge against him, it being expressly stated in open court by said Rockwood and agreed to by Hon. George B. Curtis, District Attorney of the United States for the Northern District of New York, who was present, and said Commissioner, that there was reserved to your petitioner the right at all times to withdraw said plea of not guilty, to object to the jurisdiction of the Court, to demur to and question the validity of said indictment, or to take such other steps in relation thereto as he might be advised.

That thereupon your petitioner was admitted to bail for his appearance "on the first day of the next term of the Supreme Court of the District of Columbia to be held for the said District, then and there to answer to the indictment, etc.," in the sum of ten thousand dollars ($10,000), which bail was furnished by your petitioner with Edgar D. Starbuck and Will W. Blackmer as sureties, which bond was duly approved by said Commissioner, and your petitioner discharged from the custody of the said Marshal.

That since said August 23, 1905, your petitioner has procured a copy of the return of the said United States Commissioner of the proceedings which took place before him as aforesaid. That said return wholly fails to state the facts of what occurred before said Commissioner in the matter of the reservation of your peti-
530 tioner's rights, in that said return wholly fails to state that there was reserved to your petitioner the right at all times to withdraw said plea of not guilty, to object to the jurisdiction of the Court, to demur to and question the validity of said indictment, or to take such other step in relation thereto as he might be advised. Said return is also incorrect in that said indictment was not read to your petitioner, as alleged therein. In reference thereto I annex hereto and make a part of this my petition the affidavit of Wharton E. Lester, verified the 22d day of September, 1905.

Exhibit "A."

Affidavit of Lester.

That since said August 23, 1905, I have requested my attorneys to carefully examine said indictment which has been done, and your petitioner has been advised by such counsel to wit, Arthur A. Birney, Esq., of Washington, D. C., and Nash Rockwood, of the firm of Rockwood & Salisbury, of Saratoga Springs, N. Y., and verily believes that said indictment does not charge your petitioner with the commission of any offense whatever against the said United States of America prohibited either by the Common Law or by any law or statute of said United States of America.

That thereafter and on the 2nd day of October, 1905, the said sureties upon the bail bond of your petitioner, to wit, Edgar D. Starbuck and Will W. Blackmer, produced the body of your petitioner before said Charles M. Davison, United States Commissioner, and thereupon, pursuant to the provisions of Section 1018 of the Revised Statutes of the United States, surrendered and delivered your petitioner to the said Elmer E. Belden, a deputy of the Marshal
531 of the United States for the Northern District of New York, who was then and there present before said Commissioner. That the surrender of your petitioner was then and there duly and in terms accepted by said Commissioner, and said Deputy Marshal of the United States, and at the request of such bail said Commissioner duly endorsed upon a certified copy of said recognizance the discharge and exoneration of such bail.

Thereupon your petitioner demanded a hearing before said Commissioner upon the question of probable cause of the guilt of your petitioner, which was denied. Thereupon your petitioner demanded that said United States Commissioner file an amendment to his return, showing that there was reserved to your petitioner the right at all times to withdraw said plea of not guilty, to object to the jurisdiction of the Court, to demur to and question the validity of said indictment, or to take such other step in relation thereto as he might be advised, which request was denied, to which your petitioner duly excepted.

Exhibit B.

Copy of 2nd Commitment of Commissioner to Marshall.

That thereupon such proceedings were had before said Commissioner that your petitioner was re-committed to the custody of the United States Marshal for the Northern District of New York, and is now in the custory of said Deputy Marshal at Saratoga Springs, N. Y., as aforesaid, and is detained by him and restrained of his liberty by virtue of said pretended and illegal arrest and commitment. A duly certified copy of said commitment is hereto annexed

and made a part hereof, the same as if herein written at
532 length.

That the arrest and detention of your petitioner is illegal and unwarranted and in violation of his constitutional rights, for the following reasons: (1.) Said pretended indictment does not expressly or by implication charge your petitioner with having committed any act or acts in violation of Section 5440 of the Revised Statutes of the United States, or with having committed any act or acts constituting a crime. (2.) There was an entire absence of proof of probable cause of the commission of said alleged crime before said Commissioner to warrant him in holding your petitioner to answer for the same or to detain and restrain him in his liberty as aforesaid. (3.) Said pretended indictment was and is wholly illegal and void, in that it does not aver the commission of a crime by your petitioner, and the acts therein set forth do not constitute a crime within the purview of said Section 5440 or of any other law or statute of the United States of America. (4.) Upon its face said pretended indictment appears to have been in part founded upon the testimony of your petitioner as a witness for the People before the said Grand Jury, which was in violation of the rights of your petitioner.

The detention of your petitioner is without authority of law and he is restrained of his liberty in violation of the Constitution of the United States, and any further proceedings in pursuance thereof, or the further detention or imprisonment of your petitioner, would be unlawful. That said United States Commissioner has no
533 jurisdiction to commit your petitioner to the custody of said United States Marshal, for the reason that said pretended indictment was and is illegal as aforesaid, and there was no probable cause for believing or finding your petitioner guilty of any offense whatever.

I annex hereto and make a part of this my petition a copy of the said pretended indictment furnished to me by the said United States Commissioner, together with a copy of said bail bond and the exoneration thereon endorsed.

EXHIBIT "C."

Copy of Indictment, Copy of Bail Bond, Copy of Exoneration.

Wherefore, your petitioner prays that a writ of *habeas corpus* issue, directed to the United States Marshal for the Northern District of New York, and to Elmer E. Belden, Deputy United States Marshal for the Northern District of New York, commanding him that he have the body of said Frederick A. Peckham, by him imprisoned and detained, together with the cause of such imprisonment and detention, before Hon. George W. Ray, United States District Judge, at the Village of Norwich, N. Y., on the 2d day of October, 1905, pursuant to the provisions of the statute in such case made and

provided, and that your petitioner be admitted to bail pending the hearing and determination of said matter.

Dated at the Village of Saratoga Springs, N. Y., this 2d day of October, 1905.

FREDERICK A. PECKHAM,
Petitioner.

534 ROCKWOOD & SALISBURY,
Attorneys for Petitioner, 378 Broadway,
Saratoga Springs, N. Y.

STATE OF NEW YORK,
County of Saratoga, ss:

Frederick A. Peckham, being duly sworn, says: That he has read the foregoing petition*er*, and knows the contents thereof, and that he believes it to be true.

FREDERICK A. PECKHAM,
Petitioner.

Sworn to before me this 2d day of October, 1905.

ELMER E. BELDEN,
Notary Public, Saratoga County, N. Y.

535 *Affidavit.*

DISTRICT OF COLUMBIA, *ss:*

I, Wharton E. Lester, being first duly sworn, according to law, make oath and say: I am a member of the bar of the Supreme Court of the District of Columbia; I was present in the office of Commissioner Charles M. Davidson at Saratoga Springs, in the State of New York, on, to wit, the 24th day of August, 1905, at the time of the acceptance by the said Commissioner of bail by Frederick A. Peckham in the matter of United States vs. Frederick A. Peckham, pending in the Supreme Court of the District of Columbia, and numbered 24,866 and was present for some – prior thereto. On said occasion the said Peckham by his counsel reserved the right to withdraw his plea of not guilty and demur to the indictment in said case or take such other action as he might be advised, which right to withdraw such plea was by said Commissioner then and there granted him the said Peckham, said Commissioner stating that it was understood that said Peckham should have the right to withdraw said plea were he so advised, and that all rights were reserved by him. I further state that I have examined the return of said Commissioner made to the Supreme Court of the District of Columbia, and find that the reservation of said right to withdraw said plea by the said Peckham, and its allowance by said Commissioner was not made a part of
536 the record in the said return of said Commissioner.

WHARTON E. LESTER.

Subscribed and sworn to before me this 22d day of September, 1905.

[L. S.] C. CLINTON JAMES,
Notary Public, D. C.

Filed in open Court, August 31, 1905.
JOHN R. YOUNG, *Clerk.*

537 *Commissioner's Record, etc.*

In Commissioner's Court of the United States of America, Northern District of New York.

Before Charles M. Davison, U. S. Commissioner.

UNITED STATES
vs.
FREDERICK A. PECKHAM.

Charge: With having unlawfully, &c., on the second (2nd) day of June, 1904, at the City of Washington, in the District of Columbia, committed the crime of conspiracy to defraud the United States in violation of Section 5440 of the Revised Statutes of The Congress of the United States, and for which offense the said Peckham was on the second (2nd) day of August, 1905, duly indicted by the Grand Jury of the Supreme Court of the said District of Columbia for said offense, together with one Edwin S. Holmes, Junior, and Moses Haas, and said indictment was on the 2nd duly filed with said Court and is now pending against said accused in the said Supreme Court.

1905, August 23.—On this day personally came Mark J. Thomas and on oath duly made complaint against the defendant above
538 named to the foregoing charge; whereupon I issued a warrant for the arrest of the defendant and delivered the same with a certified copy of the complaint to Elmer E. Belden, Field Marshal of the United States in and for the Northern District of New York.

The said Marshal brought the defendant before me on said day at my office in the village of Saratoga Springs, N. Y. Having made the defendant acquainted with the charge against him as aforesaid and advised him that he was entitled to Counsel, he elected to have the Hon. Nash Rockwood, Counsellor at law, of the village aforesaid, his Counsel; said Rockwood did then and there appear for said defendant specially and objected to the proceedings on the ground that the papers give the Commissioner no jurisdiction and that the warrant issued to the Marshal is illegal and does — comply with the statute.

Objections overruled.

Examination adjourned until August 24, 1905, at 10 A. M. at same place. In default of bail in the sum of $12,000 defendant

committed to Saratoga County, N. Y., jail. Temporary commitment issued to Marshal.

Case called. Defendant in court personally and by his counsel, Rockwood & Salisbury; the United States appeared by Hon. Geo. B. Curtiss, United States attorney, of Binghamton, N. Y. The authenticated copy of an indictment, No. 24,866, found by the Grand Jury of the Supreme Court of the United States in and for the
539 District of Columbia on August 2, 1905, was read to the defendant by the said United States attorney in the presence of said Commissioner as a part of the complaint on which the warrant herein was issued, as stated in said complaint. The defendant thereupon pleaded not guilty. The defendant admitted in open court that he is the Frederick A. Peckham named in said indictment as one of the accused. That said indictment is entitled United States against Edward S. Holmes, Junior, Frederick A. Peckham, and charges the accused therein with having entered into a conspiracy to defraud the United States of America in violation of Section 5440 of the Revised Statutes of the United States at and in the District of Columbia, June 2, 1904.

United States District Attorney offered in evidence the said indictment, which was received in evidence and marked Exhibit "A," and which is hereunto attached and made a part of this report.

The defendant then and there waived further examination.

The United States then rested and no further evidence was offered by either party.

Upon the foregoing evidence, I, Charles M. Davison, United States Commissioner, in and for the Northern District of New York, do here find:

(1.) That the crime charged in the indictment aforesaid and in the complaint herein has been committed, and (2ndly) that
540 the defendant is one of the accused charged in said indictment as having committed said crime, and that there is sufficient evidence herein to say that he is probably guilty thereof.

I therefore order that the defendant Frederick A. Peckham enter into a recognizance with two sufficient sureties in the sum of $10,000 to appear at a session of the Supreme Court of the U. S., in and for the District of Columbia, to answer said indictment.

Whereupon the defendant electing in open court so to do did enter into and did execute a recognizance, with Edgar D. Starbuck and Will W. Blackmer, both of the said village of Saratoga Springs, in the County of Saratoga and in the Northern District of New York, as sureties, in the sum of ten thousand dollars for his appearance at said Court at the time and for the purposes set forth and mentioned in said recognizance.

UNITED STATES
vs.
FREDERICK A. PECKHAM.

I hereby certify that the foregoing is a true record of the evidence taken before me on the examination had in the above entitled case and the findings made therein.

541 [SEAL.] CHARLES M. DAVISON,
U. S. Commissioner, Northern District of New York.

August 24, 1905.

Bond.

U. S. Commissioner Court of United States for the Northern District of New York, Saratoga County.

Be it remembered that on the 24th day of August, 1905, personally came before me Charles M. Davison, a United States Commissioner for the Northern District of New York, Frederick A. Peckham, of the City and County of New York, and Edgar D. Starbuck and Will W. Blackmer, of the County of Saratoga, N. Y., and jointly and severally acknowledged themselves to be indebted to the United States of America, in the full sum of Ten Thousand Dollars, lawful money of the United States, to the payment — which well and truly to be made, we bind ourselves and each of our heirs, executors and administrators, jointly and severally, firmly *to* these presents, to be levied of their respective goods, chattels, lands and tenements

542 to the use of the said United States of America if the said Frederick A. Peckham shall make default in the condition following:

Whereas, the said Frederick A. Peckham was charged before the said Commissioner on the 23d day of August, 1908, upon the oath of Frederick A. Thomas, with having on the 2d day of June, 1904, at the City of Washington, in the District of Columbia, committed the crime of conspiracy to defraud the United States in violation — 5440 of the Revised Statutes of the United States, for which offense the said Frederick A. Peckham was on the 22d day of August, 1905, duly indicted by the Grand Jury in the Supreme Court of said District of Columbia for said offense, together with one Edwin S. Holmes, Jr., and Moses Haas, and said indictment was on the 22d day of August, 1905, duly filed with said Court and is now pending against said accused in said Supreme Court.

And the said Frederick A. Peckham, having been regularly brought before the said Commissioner to answer said charge from an examination of the said Frederick A. Peckham, and others, on oath, in the presence of Frederick A. Peckham, in regard to the offense thus charged, and from an examination of the said Frederick A. Peckham, without oath, in relation thereto, he having been by the said Commissioner previously informed of the charge made against him, and that he was at liberty to refuse any question that might

be put to him, and he having been allowed a reasonable time
543 to send for and advise with counsel, and from an examination of the whole matter, it appearing to the said Commissioner that the said offense had been committed, and that there was a probable cause to believe the said Frederick A. Peckham guilty thereof, the said Commissioner did thereupon order the said Frederick A. Peckham to enter into a recognizance himself in the sum of Ten Thousand Dollars, with two sureties in the sum of Ten Thousand Dollars each for his appearance in the Supreme Court of the District of Columbia on the 1st day of the next term of said Court, to be held in and for said District of Columbia commencing on the 3d day of October, 1905, to answer to said indictment, and to further receive what would be then and there enjoined upon him by the said Court, and not to depart the said Court without leave, and to obey all further orders of said Court.

Now, therefore, the condition of this recognizance is such that if the said Frederick A. Peckham shall personally be and appear on the first day of the next Term of the Supreme Court of the District of Columbia, to be held for the said District, then and there to answer to the indictment, or to any other indictment, which may be pending or found against him, for said offense, and to do further and receive what shall then and there be enjoined upon him by the said Court, and shall not depart the said Court without leave, and obey all further orders of said Court, then this recognizance to be void and of no effect, otherwise to remain in full force and virtue.

544 F. A. PECKHAM.
E. D. STARBUCK.
WILL W. BLACKMER.

Taken, subscribed and acknowledged before me, the day and year first above written.

CHARLES M. DAVISON,
U. S. Commissioner for the Northern District of New York.

NORTHERN DISTRICT OF NEW YORK,
Saratoga County, ss:

Edgar D. Starbuck and Will W. Blackmer, the sureties named in the foregoing recognizance, being severally sworn, depose and say The said Edgar D. Starbuck for himself saith, that he is a freeholder, residing in the County of Saratoga, N. Y., and that he is worth the sum of twenty thousand dollars, over and above all his just debts and liabilities. And the said William W. Blackmer for himself saith, that he is a freeholder, residing in the County of Saratoga, N. Y., and that he is worth twenty thousand dollars, over and above all his just debts and liabilities.

E. D. STARBUCK.
WILL W. BLACKMER.

545 Subscribed and sworn to before me, this 24th day of August, 1905.

[SEAL.] CHARLES M. DAVISON,
U. S. Commissioner for the Northern District of New York.

A true copy.

Test:

J. R. YOUNG, *Clerk.*
By F. W. SMITH,
Ass't Clerk.

546 *Commissioner's Exoneration of Bail.*

In Commissioner's Court of the United States of America, Northern District of New York.

Before Charles M. Davison, United States Commissioner.

UNITED STATES
vs.
FREDERICK A. PECKHAM.

OCTOBER 2, 1905—9.12 A. M.

I, Charles M. Davison, a Commissioner of the United States in and for the Northern District of New York, duly appointed, qualified and acting, do hereby Certify and State that on the 2d day of October, 1905, at 9.12 A. M., the body of Frederick A. Peckham, the defendant above named, was delivered and surrendered by his bondsmen, Edgar D. Starbuck and Will W. Blackmer, in my presence to the custody of Elmer E. Belden, the Field Deputy Marshal of the Marshal of the United States for the Northern District of New York. That I thereupon accepted such surrender and delivery, and I do now hereby, in pursuance of the provisions of Section 1018 of the Revised Statutes of the United States of America, fully and in all respects discharge and exonerate said Will W. Blackmer and Edgar D.
547 Starbuck, their and each of their heirs, executors, administrators and assigns of and from any and all further liability upon said bond or recognizance heretofore entered into by them before me on the 24th day of August, 1905, as sureties for the appearance of Frederick A. Peckham, as in said bond set forth.

This discharge and exoneration of bail is endorsed upon a certified copy of said recognizance.

In witness whereof I have hereunto affixed my hand and the seal of my office this 2d day of October, 1905, at 9.12 A. M., at Saratoga Springs, N. Y., and of the Independence of the United States of America, the one hundred and thirtieth year.

CHARLES M. DAVISON. [SEAL.]
United States Commissioner.

548 *Commissioner's Warrant After Surrender.*

The President of the United States of America to the Marshal of the Northern District of New York and to the Keeper of the Common Jail in the County of Saratoga, Greeting:

Whereas, Frederick A. Peckham was apprehended and brought before Charles M. Davison, a United States Commissioner in and for the Northern District of New York, heretofore, for an examination, by virtue of a warrant of said Commissioner upon a complaint made before him in writing, duly made on oath, charging the said Peckham with the violation of Section 5440 of the Revised Statutes of the United States, in that he did at the City of Washington, in the District of Columbia, on or about the 2d day of June, 1904, unlawfully, knowingly and wrongfully then and there commit the crime of conspiracy to defraud the United States of America, and for which offense the said Peckham was on the 2d day of August, 1905, duly indicted by the Grand Jury of the Supreme Court of the said District of Columbia for said offense, together with one Edward S. Holmes, Junior, and Moses Haas, and same having been duly filed with said Court, and is now pending against said accused in said Supreme Court. And whereas, on such examination it appeared that
549 the crime charged against the said Peckham, and hereinbefore mentioned, had been committed, and there is probable cause to believe that the said Peckham did commit the said crime and is guilty of the same; and the said Commissioner, on the 24th day of August, 1905, ordered the said Peckham to enter into a recognizance, with sufficient surety in the sum of ten thousand dollars for his appearance for trial on said indictment at the next term of the Supreme Court of the District of Columbia, to be held in and for the said District of Columbia, commen*d*ing on the 3d day of October, 1905, to receive what should be then and therein enjoined upon him by the said Court, and not to depart the said Court without leave, and to obey all further orders of said Court.

And whereas the said Peckham electing so to do, did on the 24th day of August, 1905, *did* duly make and enter into said recognizance, with Edward D. Starbuck and Will W. Blackmer, of Saratoga Springs, N. Y., as sureties; and whereas on this 2d day of October, 1905, the said Edward D. Starbuck and Will W. Blackmer, sureties as aforesaid, did arrest, at Saratoga Springs, N. Y., the said Peckham and delivered him to Elmer E. Belden, one of the deputies of the United States Marshal in and for the Northern District of New York, before the said Commissioner, at his office in Saratoga Springs aforesaid, and they, the said sureties, did then and there surrender the said Peckham and requested said Commissioner to recommit the said Peckham to custody, as provided by law and especially Section
550 1018 of the Revised Statutes of the United States, all of which acts of said sureties were done during vacation of said Supreme Court; and whereas the said Peckham has not furnished or offered to furnish any other bail; now, therefore, you the said Marshal are hereby commanded that you convey the said Peckham to the

said jail; and you, the said keeper of said jail, are hereby commanded that you receive the said Peckham into the said jail and him there safely keep until he be discharged therefrom by due course of law.

Witness the hand and seal of said Commissioner at Saratoga Springs, N. Y., this 2d day of October, 1905, and the Independence of the said United States the 130th year.

CHARLES M. DAVISON, [SEAL.]
U. S. Commissioner, Northern District of N. Y.

551 UNITED STATES
vs.
FREDERICK A. PECKHAM.

I hereby certify that the foregoing is a true copy of the commitment this day signed by me in the above entitled matter.

Witness my hand and the seal of my office, at Saratoga Springs, N. Y., this 2d day of October, 1905.

[L. S.] CHARLES M. DAVISON,
United States Commissioner,
Northern District of New York.

(Endorsed:) Commitment.

552 *Authentication.*

Supreme Court of the District of Columbia.

I, John R. Young, Clerk of the said Court, do hereby certify that the following copy of indictment, annexed to this certificate, is a true copy of the original on file and of record in said office, and that said original indictment is pending in said Court.

Witness my hand and the seal of said Court, this 22d day of August, 1905.

[L. S.] (Sd.) JOHN R. YOUNG, *Clerk.*
By —— ——, *Ass't Clerk.*

—, Harry M. Clabaugh, Chief Justice of said Court, do certify the foregoing attestation by John R. Young, Clerk of the said Court, to be in due form.

Witness my hand and seal this 22d day of August, 1905.

(Sd.) HARRY M. CLABAUGH,
[SEAL.] *Chief Justice.*

553 I, John R. Young, Clerk of said Court, hereby certify that the Honorable Harry M. Clabaugh, whose genuine signature is subscribed to the foregoing certificate, was, at the time of signing and attesting the same, Chief Justice of said Court, duly commissioned and qualified.

Witness my hand and the seal of said Court, this 22d day of August, 1908.

[L. S.] (Sd.) JOHN R. YOUNG, *Clerk*,
By —— ——, *Ass't Clerk*.

Here follows copy of Indictment of April, 1905.

554 UNITED STATES
vs.
FREDERICK A. PECKHAM.

Commissioner's Commitment After Surrender.

555 Commitment.

The President of the United States of America to the Marshal of the Northern District of New York and to the Keeper of the Common Jail in the County of Saratoga, Greeting:

Whereas, Frederick A. Peckham was apprehended and brought before Charles M. Davison, a United States Commissioner in and for the Northern District of New York, heretofore, for an examination, by virtue of a warrant of said Commissioner upon a complaint made before him in writing—duly made on oath, charging the said Peckham with the violation of Section 5440 of the Revised Statutes of the United States in that he did at the City of Washington, in the District of Columbia, on or about the 2d day of June, 1904, unlawfully, knowingly and wrongfully then and there commit the crime of conspiracy to defraud the United States of America, and for which offense the said Peckham was, on the 2d day of August, 1905, duly indicted by the Grand Jury of the Supreme Court of the said District of Columbia for said offense, together with one Edward S. Holmes, Junior, and Moses Haas, and same having been duly filed with said Court, and is now pending against said accused in said Supreme Court. And whereas on such examination it appeared that the crime charged against the said Peckham and hereinbefore mentioned had been committed, and there is probable cause to believe that the said Peckham did commit the said crime
556 and is guilty of the same; and the said Commissioner on the 24th day of August, 1905, ordered the said Peckham to enter into a recognizance, with sufficient surety in the sum of ten thousand dollars for his appearance for trial on said indictment at the next term of the Supreme Court of the District of Columbia, to be held in and for said District of Columbia, commencing on the 3rd day of October, 1905, to receive what should be then and there enjoined upon him by the said Court and not to depart the said Court without leave and to obey all further orders of said Court. And whereas the said Peckham electing so to do, did on the 24th day of August, 1905, *did* duly make and enter into said recognizance, with Edward D. Starbuck and Will W. Blackmer, of Saratoga Springs, N. Y., as sureties; And whereas on this 2nd day of October, 1905, the said Edward D. Starbuck and Will W. Blackmer, sureties

as aforesaid, did arrest, at Saratoga Springs, N. Y., the said Peckham and delivered him to Elmer E. Belden, one of the deputies of the United States Marshal in and for the Northern District of New York, before the said Commissioner, at his office in Saratoga Springs aforesaid, and they, the said sureties, did then and there surrender*ed* the said Peckham and requested said Commissioner to recommit the said Peckham to custody, as provided by law and especially Section 1018 of the Revised Statutes of the United States, all of which acts of said sureties were done during vacation of said Supreme Court.

And whereas the said Peckham has not furnished or offered
557 to furnish any other bail: Now, therefore, you the said Marshal are hereby commanded that you convey the said Peckham to the said jail. And you the said keeper of said jail, are hereby commanded that you receive the said Peckham into the said jail and him there safely keep until he be discharged therefrom by due course of law.

Witness the hand and seal of said Commissioner at Saratoga Springs, N. Y., this 2nd day of October, 1905, and the Independence of the said United States, the 130th year.

CHARLES M. DAVISON, [L. S.]
U. S. Commissioner, Northern District of N. Y.

558 UNITED STATES
vs.
FREDERICK A. PECKHAM.

Writ of Habeas Corpus.

559 Writ of Habeas Corpus.

The President of the United States of America to Clinton D. MacDougall, Marshal of the United States for the Northern District of New York, and to Elmer E. Belden, a deputy of the said Marshal:

We command you,

That you have the body of Frederick A. Peckham, by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever name the said Frederick A. Peckham shall be called or charged, before the Hon. George W. Ray, United States District Judge for the Northern District of New York, at United States Court Rooms, in the City of Auburn, Northern District of New York, on the 3d day of October, 1905, 2 P. M., to do and receive what shall then and there be considered concerning said Frederick A. Peckham, and have you then and there this writ.

Witness, Hon. George W. Ray, United States District Judge, Northern District of New York, at the City of Utica, this 2d day of October, 1905.

[L. S.] W. S. DOOLITTLE, *Clerk.*

ROCKWOOD & SALISBURY,
Petitioner's Attorneys,
378 Broadway, Saratoga Springs, N. Y.

560 Let the foregoing writ issue.
October 2, 1908.

GEO. W. RAY,
U. S. Judge.

561 UNITED STATES
vs.
FREDERICK A. PECKHAM.

Return to Writ of Habeas Corpus.

Filed Oct. 3, 1905.

W. S. DOOLITTLE, *Clerk.*

562 Return to Writ of Habeas Corpus.

In United States District Court, Northern District of New York.

THE UNITES STATES
vs.
FREDERICK A. PECKHAM.

In the Matter of the Application of FREDERICK A. PECKHAM for Discharge under a Writ of Habeas Corpus.

To the said United States District Court:

I, Elmer E. Belden, hereby make return to the writ of habeas corpus issued out of the said Court, on the 2d day of October, 1905, as follows: I hereby produce the said Frederick A. Peckham in open court, and return that I hold the said Frederick A. Peckham in custody by virtue of a commitment duly issued to the United States Marshal of said Northern District of New York, by Charles M. Davison, a United States Commissioner in and for said Northern District. A copy of which said Commitment is hereto annexed. I further return that I am a Deputy United States Marshal for said District and authorized to act under said commitment.

563 Dated, October 3, 1905.

C. D. MACDOUGALL, *Marshal.*
By ELMER E. BELDEN,
Dep. U. S. Marshal.

564 UNITED STATES
vs.
FREDERICK A. PECKHAM.

Order Admitting Petitioner to Bail.

565 Order Admitting Petitioner to Bail.

At a Stated Term of the United States District Court, held in and for the Northern District of New York, at the United States Court House, in the City of Auburn, on Tuesday, October 3, 1905.

Present: The Honorable George W. Ray, Judge.

UNITED STATES
vs.
FREDERICK A. PECKHAM.

Return to Writ of habeas corpus. Return filed. Defendant produced in court by E. E. Belden, Deputy Marshal.

Appearances.

Mr. Nash Rockwood, for Petitioner.
Mr. George B. Curtiss, for United States.
Hearing adjourned until October 16, 1905, at Auburn.
Defendant admitted to bail in $12,000 to appear at that time, and he having given such bail, it is ordered that the prisoner be released from custody.

566 UNITED STATES
vs.
FREDERICK A. PECKHAM.

Undertaking.

Filed October 3, 1905.

W. S. DOOLITTLE, *Clerk.*

Oct. 3, 1905.—Approved.

GEO. W. RAY,
U. S. Judge.

567 Undertaking.

In the District Court of the United States for the Northern District of New York.

UNITED STATES
vs.
FREDERICK A. PECKHAM.

Be it remembered, that on the 3d day of October, 1905, personally came before me, George W. Ray, United States District Judge for the Northern District of New York, Frederick A. Peckham, of the City and County of New York, and Edgar D. Starbuck and Will W. Blackmer, of the County of Saratoga, N. Y., and jointly and severally acknowledged themselves to be indebted to the United States of America in the full sum of twelve thousand dollars ($12,000), to the payment of which well and truly to be made, we bind ourselves and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, to be levied of their respective goods, chattels, lands and tenements, to the use of the United States of America, if the said Frederick A. Peckham shall make default in the condition following:

Whereas, the said Frederick A. Peckham was charged be-
568 fore the said Commissioner on the 23d day of August, 1905, upon the oath of Frederick A. Thomas, with having on the second day of June, 1904 at the City of Washington, in the District of Columbia, committed the crime of conspiracy to defraud the United States in violation — 5440 of the Revised Statutes of the United States, for which offense the said Frederick A. Peckham was on the 22d day of August, 1905, duly indicted by the Grand Jury in the Supreme Court of said District of Columbia for said offense, together with one Edwin S. Holmes, Jr., and Moses Haas, and said indictment was on the 22d day of August, 1905, duly filed with said Court, and is now pending against said accused in said Supreme Court; and

Whereas, such proceedings were had in said matter before Charles M. Davison, United States Commissioner for the Northern District of New York, having an office at Saratoga Springs, N. Y., that said Commissioner did on or about the 24th day of August, 1905, order and direct that there was probable cause to believe the said Frederick A. Peckham guilty of the charge against him, and said Commissioner did then order the said Frederick A. Peckham to enter into a recognizance in the sum of ten thousand dollars ($10,000), with two sureties, for his appearance at the Supreme Court of the District of Columbia on the first day of the next Term of said Court to answer said indictment and to further receive what would be then and there enjoined upon him by the said Court, and not to depart the said
Court without leave and to obey all further orders of said
569 Court; and

Whereas, such proceedings were had that said Frederick A. Peckham did furnish said recognizance with sureties and was discharged from the custody of the Marshal of the United States; and

Whereas, such proceedings were thereafter had that on or about the second day of October, 1905, said Frederick A. Peckham was delivered and surrendered to the custody of the Marshal of the United States for the Northern District of New York by his sureties in the presence of said Commissioner in accordance with Section 1018 of the Revised Statutes of the United States; and

Whereas, said Commissioner did accept such surrender and did thereupon recommit said Frederick A. Peckham in the custody of said marshal, and thereupon detained the said Peckham in accordance with said commitment; and

Whereas, the said Frederick A. Peckham did thereafter and on the 2d day of October, 1908, apply to Honorable George W. Ray, District Judge for the Northern District of New York, for a writ of habeas corpus requiring said United States Marshal and the deputy of said marshal to show cause before said Honorable George W. Ray, United States District Judge, why the said Peckham should not be discharged from custody upon the ground that his detention is unlawful and illegal, and that the alleged indictment against him charges no crime; and

Whereas, said writ of habeas corpus has been issued and
570 the duly adjourned hearing thereon is returnable before Hon. Geo. W. Ray, U. S. Dist. Judge, at the U. S. Court Room,

Northern Dist. of N. Y., at Auburn, N. Y., on the 16th day of October, 1905, at 2 o'clock P. M.;

Now, therefore, the condition of this recognizance is such that if the said Frederick A. Peckham shall be and appear before the said Hon. George W. Ray, United States District Judge, at the United States Court Room, in the City of Auburn, N. Y., on the 16th day of October, 1905, at 2 o'clock P. M., then and there to receive and do what shall then and there be enjoined and directed upon him by the said Court, and shall not depart the said Court without leave, and obey all further orders of the said Court, then this recognizance to be void and — no further force or effect; otherwise to remain in full force and virtue.

FREDERICK A. PECKHAM.
WILL W. BLACKMER.
EDGAR D. STARBUCK.

Taken, acknowledged and subscribed before me this 3d day of October, 1905.

GEO. W. RAY,
U. S. District Judge, No. District of N. Y.

571 NORTHERN DISTRICT OF NEW YORK,
County of Cayuga:

Edgar D. Starbuck and Will W. Blackmer, the sureties named in the foregoing recognizance, being severally sworn, depose and say: The said Edgar D. Starbuck for himself saith that he is a freeholder residing in the County of Saratoga, N. Y., and that he is worth the sum of twenty-four thousand dollars over and above all his just debts and liabilities. And the said Will W. Blackmer for himself said that he is a freeholder, residing in the County of Saratoga, N. Y., and that he is worth twenty-four thousand dollars over and above all his just debts and liabilities.

WILL W. BLACKMER.
EDGAR D. STARBUCK.

Subscribed and sworn to before me this 3d day of October, 1905.
GEO. W. RAY,
U. S. District Judge, Northern Dist. of N. Y.

572 UNITED STATES
vs.
FREDERICK A. PECKHAM

Order Continuing Hearing on Writ of Habeas Corpus.

Filed October 16, 1905.

W. S. DOOLITTLE, *Clerk.*

573 Order Continuing Hearing on Writ of Habeas Corpus.

At a Term of the District Court for the Northern District of New York, held at the Court House, in Auburn, N. Y., October 16, 1905.
Present: Hon. George W. Ray, U. S. Judge.

THE UNITED STATES
against
FREDERICK A. PECKHAM.

On the Application of Lockwood & Salisbury, appearing for and on behalf of Frederick A. Peckham, the defendant herein, for an adjournment and continuance of the above matter, and after hearing Geo. R. Salisbury, for the application, and George B. Curtis, District Attorney, appearing on behalf of the United States and not opposing.

It is ordered, that the said matter be and the same is hereby adjourned to October 30, 1905, at 10 o'clock in the forenoon of that day, at the Court House, in Auburn, and that the defendant appear before the said Court at said time and place, then and there to obey any and all orders of the Judge or Court in said matter.

GEO. W. RAY,
U. S. Judge.

574 UNITED STATES
vs.
FREDERICK A. PECKHAM.

Order Continuing.

Filed Oct. 30, 1908.

W. S. DOOLITTLE, *Clerk.*

575 Order Continuing.

At a Term of the District Court of the United States of America, held in and for the Northern District of New York, in the Second Circuit, at the U. S. Court House, in the City of Auburn, on the 30th day of October, A. D. 1905.
Present: The Hon. George W. Ray, Judge.

No. —.

UNITED STATES
vs.
FREDERICK A. PECKHAM.

On the application of Ceylon H. Lewis appearing in behalf of Messrs. Rockwood & Salisbury, attorneys for the above named defendant, and petitioner Frederick A. Peckham, for a further continuance of above matter, and after hearing the said Ceylon H.

Lewis, for said application, and George B. Curtis appearing and not opposing said application, it is

Ordered, that the hearing on the application for a writ of habeas corpus in above matter be and the same is further adjourned to November 6, 1905, at ten o'clock in the forenoon of that day, at the U. S. Court Room, in the City of Auburn, and that the said defendant and petitioner, Frederick A. Peckham, appear before the
576 said Court at the said time and place then and there to obey any and all orders of the Judge or Court in said matter.

GEO. W. RAY,
U. S. Judge.

577 UNITED STATES
vs.
FREDERICK A. PECKHAM.

Order Continuing Hearing to December 5, 1905

578 Order.

In the District Court of the United States for the Northern District of New York.

In the Matter of
THE UNITED STATES
vs.
FREDERICK A. PECKHAM.

The defendant in the above entitled matter having been heretofore held by Charles M. Davison, United States Commissioner, at Saratoga, N. Y., for trial, upon an indictment found against the said defendant in the City of Washington, D. C., and thereafter the said defendant, Frederick A. Peckham, while in the custody of a deputy United States Marshal, having presented a duly verified petition setting forth reasons why, and alleging that, he was illegally restrained of his liberty, and praying that a writ of habeas corpus issue and that he be discharged from custody, and thereupon a writ of habeas corpus having been issued by me, upon the return of which George B. Curtiss, United States Attorney for the Northern District of New York appeared on behalf of the United States and Nash Rockwood, a counsellor of this Court, residing at Saratoga Springs, N. Y., appeared for said defendant, and the hearing thereon having
579 been duly adjourned to November 6, 1905; and it further appearing that Morgan H. Beach of the City of Washington, has been duly appointed special assistant of the Attorney General in the above entitled matter in the prosecution of said indictment against said defendant, and that the said Morgan H. Beach has requested that the hearing on said writ be further adjourned and continued to the 5th day of December, 1905, to be heard at that time at the United States Court Rooms, in the City of Utica, N. Y., and has duly signed a stipulation herein that said hearing be so adjourned and continued, which said stipulation has been approved by

the said George B. Curtiss, United States Attorney, and the said Nash Rockwood, attorney for said defendant, as aforesaid, and the said George B. Curtiss, as counsel for the United States, aforesaid, having severally made a like request and signed a like stipulation,

Now, therefore, upon the said stipulations so signed by the said Morgan H. Beach, Nash Rockwood and George B. Curtiss, as aforesaid, which are annexed hereto, and upon all the papers and proceedings heretofore had herein, and upon motion of George B. Curtiss, United States Attorney, and the personal appearance and consent thereto by N. P. Bonney, a counsellor of this Court, of counsel for the said defendant, it is hereby

Ordered, that the hearing in the above entitled matter, heretofore continued until this day, be, and the same hereby is, further adjourned and continued until the opening of the United States
580 Court at the City of Utica, N. Y., on Tuesday, the 5th day of December, A. D. 1905, at ten o'clock in the forenoon, at which place and time the defendant Frederick A. Peckham is hereby directed and ordered to appear and be present to abide such further order as may be then and there made in the premises.

GEO. W. RAY,
U. S. Judge.

581 UNITED STATES
vs.
FREDERICK A. PECKHAM.

Stipulation to Adjourn Hearing to December 5, 1905.

582 *Stipulation.*

In the District Court of the United States for the Northern District of New York.

In the Matter of
THE UNITED STATES
vs.
FREDERICK A. PECKHAM.

Stipulation, that the hearing upon the application of the defendant for a discharge under the writ of habeas corpus heretofore issued, which hearing has been adjourned to November 6, 1905, at two o'clock P. M., at the Court House, at Auburn, N. Y., be further adjourned and brought on for hearing at the United States Court Rooms, at the City of Utica, N. Y., on Tuesday, the 5th day of December, 1905.

Further stipulated, that this adjournment shall be without prejudice in any way to any of the rights of the respective parties.

Dated October 31, 1905. Subject to the approval of the U. S. Att'y. North. Dist. N. Y.

MORGAN H. BEACH,
Special Assistant to the Attorney General in the Above Entitled Matter.

Attorney for the Defendant, Frederick A. Peckham.

583 Approved November 4, 1905.
GEO. B. CURTISS,
U. S. Att'y, N. D. N. Y.
G. W. R., *U. S. J.*

584 *Stipulation.*

In the District Court of the United States for the Northern District of New York.

In the Matter of
THE UNITED STATES
vs.
FREDERICK A. PECKHAM.

Stipulated, that the hearing upon the application of the defendant for a discharge under the writ of habeas corpus heretofore issued, which hearing has been adjourned to November 6, 1905, at two o'clock P. M., at the Court House at Auburn, N. Y., be further adjourned and brought on for hearing at the United States Court Rooms, at the City of Utica, N. Y., on Tuesday, the 5th day of December, 1905.

Further stipulated, that this adjournment shall be without prejudice in any way to any of the rights of the respective parties.

Dated October 31, 1905.

GEO. B. CURTISS,
U. S. Attorney, N. D. N. Y., Special Assistant to the Attorney-General in the Above Entitled Matter.
NASH ROCKWOOD,
Of ROCKWOOD & SALISBURY,
Attorney for the Defendant, Frederick A. Peckham.

G. W. R., *U. S. J.*

(Endorsed.) Stipulation to adjourn hearing to December 5, 1905.
(Endorsement on cover.) Stipulation and Order. Filed Nov. 6, 1905. W. S. Doolittle, Clerk.

585 *Defendant's Consent to Adjournment and Agreement to be Present on Adjourned Day.*

In the United States District Court for the Northern District of New York.

Before Honorable George W. Ray, United States District Judge.

UNITED STATES
vs.
FREDERICK A. PECKHAM.

I, the undersigned, defendant in the above entitled proceeding, do hereby expressly consent to an adjournment of the proceedings upon

my application for a writ of habeas corpus now pending before Honorable George W. Ray, United States District Judge, and duly returnable at Auburn, N. Y., on December 5, 1905, to such time and place as said Judge may direct.

I further consent and agree to be present at said adjourned day and to at all times hold myself amenable to such order or direction as said Judge may make in the premises.

Dated New York, December 4, 1905.

F. A. PECKHAM.

STATE OF NEW YORK,
City and County of New York, ss:

On this 4th day of December in the year one thousand
586 nine hundred and five, before me, the subscriber, personally appeared Frederick A. Peckham, to me known and known to me to be the same person described in and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same for the uses and purposes therein mentioned.

[L. S.]

WM. R. MOORE,
Notary Public, N. Y. County.

(Endorsed:) Defendant's Consent to adjournment, and agreement to be present on adjourned day. Filed December 5, 1905.—W. S. Doolittle, Clerk.

Consent of Sureties that Proceedings be Adjourned.

In the United States District Court for the Northern District of New York.

Before Honorable George W. Ray, United States District Judge.

UNITED STATES
vs.
FREDERICK A. PECKHAM.

We, the undersigned, sureties upon the undertaking of Frederick A. Peck-, above named, do hereby expressly consent that the proceedings now pending before Honorable George W. Ray, United States District Judge for the Northern District of New York,
587 which have heretofore been duly adjourned to December 5, 1905, at Auburn, N. Y., may be further adjourned to such time and place as Honorable George W. Ray may direct, and that our liability as such sureties shall continue in full force and effect until duly discharged according to law.

Dated December 4, 1905.

EDGAR D. STARBUCK.
WM. W. BLACKMER.

STATE OF NEW YORK,
County of Saratoga, ss:

On this 4th day of December, in the year one thousand nine hundred and five, before me, the subscriber, personally came and appeared Edgar D. Starbuck and Will W. Blackmer, to me known and known to me to be the two individuals described in and who executed the foregoing instrument, and they severally duly acknowledged to me that they executed the same for the uses and purposes therein mentioned.

[L. S.] ELMER E. BELDEN,
Notary Public.

(Endorsed:) Consent of sureties that proceedings be adjourned,—Filed December 5, 1905.—W. S. Doolittle, Clerk.

588 *Affidavits.*

In the District Court of the United States for the Northern District of New York.

In the Matter of
THE UNITED STATES
vs.
FREDERICK A. PECKHAM.

Affidavit of Frederick A. Peckham, Defendant.

STATE, CITY, AND COUNTY OF NEW YORK, *ss:*

Frederick A. Peckham, being duly sworn deposes and says:

I am the defendant above named, and am now actually confined to my house and bed at my residence, No. 112 West Forty-seventh street, New York City, Borough of Manhattan, suffering from an attack of prostatitis and cystitis. I have been suffering from this complaint and under the care and treatment of Dr. James R. Hayden during the last two weeks, and the affidavit of my said physician is hereto annexed showing my condition. I am now suffering intense pain and I verily believe, as appears from the affidavit of my said physician hereto annexed, that it would be hazardous for me to attempt to leave my house or my bed, and that I have been so advised by my said physician.

F. A. PECKHAM.

Subscribed and sworn to before me this December 2d, 1905.

[L. S.] JOHN MACGREGOR,
Notary Public, N. Y. Co.

589 *Affidavit of Dr. James R. Hayden.*

In the District Court of the United States for the Northern District of New York.

In the Matter of
THE UNITED STATES
vs.
FREDERICK A. PECKHAM.

STATE, CITY, AND COUNTY OF NEW YORK, *ss:*

James R. Hayden, being duly sworn, deposes and says: That he is a practicing physician duly admitted to practice as a physician in the State, City and County of New York, whose office is at No. 107 West Fifty-fifth street, N. Y. City, Borough of Manhattan; that he is now the physician in charge of and treating defendant during the last two weeks, or thereabouts; and the said defendant is now confined to his bed suffering from an attack of prostatitis and cystitis; and that in deponent's opinion it would be hazardous for the defendant to leave his house or bed, and deponent has so advised his said patient.

JAMES R. HAYDEN.

Subscribed and sworn to before me, this December 2, 1905.
[L. S.] JOHN MACGREGOR,
Notary Public, N. Y. Co.

590 *Affidavit of Archibald Gillies.*

In the District Court of the United States for the Northern District of New York.

In the Matter of
THE UNITED STATES
vs.
FREDERICK A. PECKHAM.

STATE, CITY AND COUNTY OF NEW YORK, *ss:*

Archibald Gillies, being duly sworn deposes and says: That he is graduate trained nurse and that he is the nurse now in charge of Frederick A. Peckham, the defendant above named, under Dr. James R. Hayden, the physician whose affidavit is hereto annexed.

That deponent has attended the said Frederick A. Peckham, the patient above referred to, night and day, and that from deponent's experience and his observation of the said patient he seems to be continually suffering intense pain, and is confined to his bed, unable to leave it, and in deponent's opinion, based on his experience and his observation of said Frederick A. Peckham it would be dangerous

to him to leave his home or his bed at present, and would cause a serious relapse to that patient.

ARCHIBALD GILLIES.

Subscribed and sworn to before me this December 2, 1905.

[L. S.] JOHN MACGREGOR,
Notary Public, N. Y. Co.

(Endorsed:) Affidavits.—Filed Dec. 5, 1908.—W. S. Doolittle, Clerk.

591 *Order.*

At a Term of the District Court of the United States of America for the Northern District of New York, in the Second Circuit, held at the U. S. Court House in the City of Auburn, in said Northern District of New York, on the 5th day of December, 1905.

Present: Hon. George W. Ray, Judge.

THE UNITED STATES OF AMERICA
vs.
FREDERICK A. PECKHAM.

On Application for Writ of Habeas Corpus.

The hearing upon the return of the writ of habeas corpus in the above matter having been duly adjourned by consent of counsel for the respective parties to this day at the City of Utica, N. Y., and by consent the attorneys appeared at the City of Auburn, N. Y., instead of said city of Utica, and the said petitioner, Frederick A. Peckham, owing to illness, having failed to appear pursuant to the consent and order of adjournment heretofore filed and entered, to fulfil the requirements of his bond heretofore executed and filed in this Court, and Nash Rockwood, Esq. attorney for said defendant, and said petitioner appearing and requesting a further adjournment of said hearing, and having filed the affidavits of James R. Hayden, Archibald Gillies and of the defendant herein in support of said application, and the defendant having executed and filed a consent to said adjournment and to be present on the adjourned day and to
592 obey any order made by this Court in this proceeding, and Edgar D. Starbuck and Will W. Blackmer the sureties upon the bond of said defendant, having executed and filed in this Court a consent to said adjournment, and further consenting that said bond and their liability thereon shall continue in full force and effect until discharged according to law, George B. Curtiss, Esq., United States Attorney, appearing but not opposing said application.

It is ordered, that the said hearing be and the same hereby is further adjourned until January 2*nd* 1906, at the U. S. Court Room in the City of Utica, N. Y. at 10 o'clock in the forenoon, and that said defendant Frederick A. Peckham appear before the said Court

at said time and place, then and there to obey any and all orders of the Judge or Court in this matter.

GEO. W. RAY,
United States District Judge.

(Endorsed:) Order filed December 5, 1905.—W. S. Doolittle, Clerk.

593 At a Term of the District Court of the United States for the Northern District of New York, in the Second Circuit, held at the U. S. Court House, in the City of Utica, on the 2d day of January, A. D. 1906.

Present: The Honorable George W. Ray, Judge.

UNITED STATES
vs.
FREDERICK A. PECKHAM, on Habeas Corpus.

Hearing on Return to Writ.

George B. Curtiss for United States.
Nash Rockwood and H. E. Davis for petitioner.

Ordered that the further hearing on the writ be adjourned to January 10, 1906, at the City of Utica, N. Y., at 11 A. M.

594 *Petition.*

Before the Hon. George W. Ray, United States District Judge in and for the Northern District of New York.

UNITED STATES OF AMERICA
vs.
FREDERICK A. PECKHAM.

To the Honorable George W. Ray, United States District Judge in and for said District:

The petition of George B. Curtiss respectively shows that your petitioner is the United States Attorney in and for the Northern District of New York. That on the 2nd day of August 1905, the Grand Jury of the Supreme Court of the District of Columbia, at Washington, D. C., duly found and presented to that Court an indictment charging that the said defendant Frederick A. Peckham on or about the 2nd day of June 1904, at the City of Washington, D. C., in said District of Columbia, entered into a conspiracy with Edward S. Holmes, Jr., and Moses Haas, to defraud the United States and to commit an offense against the United States, in violation of Section 5440 of the Revised Statutes of the United States, and that on the 23rd day of August 1904 a complaint was duly made upon the oath

of one Mark J. Thomas before Charles M. Davidson, United
595 States Commissioner in and for said Northern District of New York, at Saratoga Springs in said State of New York, and in said Northern District of New York, charging the said Frederick A. Peckham with having committed the said offense charged in said indictment, and thereupon the said United States Commissioner did then and there duly issue a warrant for the arrest of said Frederick A. Peckham, directed to the United States Marshal for said Northern District of New York or to his deputies, which warrant was placed in the hands of one Elmer E. Belden a Deputy United States Marshal in and for said Northern District of New York, for execution. And the said Frederick A. Peckham was duly arrested under said warrant by the said Elmer E. Belden at said Saratoga Springs, within the Northern District of New York, and taken before the said United States Commissioner and arraigned on said complaint. That thereupon the said Frederick A. Peckham admitted his identity, and that he is the Frederick A. Peckham charged in said indictment, and an examination was entered upon and the said indictment was placed in evidence before said Commissioner, and the defendant then and there waived further examination and was held by said commissioner for his appearance before the Supreme Court of the District of Columbia, place where said trial upon said indictment is to be had. And said Commissioner fixed bail in the sum of $10,000, with two good and sufficient sureties for the appearance of the defendant to answer said indictment as aforesaid. And the defendant thereupon gave such bail and the said Commissioner made his return to the Supreme Court of the District
596 of Columbia. That thereafter and on the 2d day of October 1905 the sureties on said bail bond caused the arrest of the said Frederick A. Peckham and duly surrendered him to the said Commissioner under and in pursuance of Section 1018 of the Revised Statutes of the United States. And the said United States Commissioner thereupon duly committed the said Frederick A. Peckham to the custody of the said Elmer E. Belden, as such deputy United States Marshal, to be dealt with according to law.

Your petitioner further shows that thereupon upon the petition of the said Frederick A. Peckham a writ of habeas corpus was duly allowed by the Hon. George W. Ray, United States District Judge in and for said District and was thereupon issued out of this Court, directed to the United States Marshal of said District and the Deputy, to inquire into the legality of the detention of the said Frederick A. Peckham by the United States Marshal and his said Deputy. That on the 3d day of January 1906, a hearing was duly had upon said writ of habeas corpus, the defendant appearing in person, and being represented by counsel, and the said Marshal and Deputy Marshal and the United States being represented by your petitioner, and after such hearings and arguments an order was made by your Honor, the United States District Judge in and for said District in said proceeding, adjudging that the detention and imprisonment of the said Frederick A. Peckham is legal, and ordering that the said writ of habeas corpus be dismissed and that the defendant be remanded to

the custody of the United States Marshal in and for the Northern District of New York, to be dealt with according to law.

597 And your petitioner further shows that in pursuance thereof the said Frederick A. Peckham now is in the custody of Clinton D. MacDougal, United States Marshal for the Northern District of New York, awaiting this application for an order of the United States District judge of this District fixing the amount of bail which the said defendant shall give for his appearance before the said Supreme Court of the District of Columbia to answer said indictment, or in default of such bail to be by the Marshal of this District delivered to the Marshal of the District of Columbia.

Wherefore, your petitioner asks that an order be made fixing bail for the appearance of the defendant Frederick A. Peck*a*ham before the Supreme Court of the District of Columbia for trial and that the order further provides that in default of giving such bail, the United States Marshal in — for said Northern District of New York, be commanded and directed to deliver the said Frederick A. Peckham to the United States Marshal for the District of Columbia.

Dated January 3, 1906.

GEO. B. CURTISS,
U. S. Attorney for the Northern District of New York.

(Endorsed:) Petition—Filed January 10, 1906—W. S. Doolittle Clerk.

598 *Opinion.*

United States District Court, Northern District of New York.

UNITED STATES
vs.
FREDERICK A. PECKHAM.

This is an application by the United States Attorney for the Northern District of New York, under Sec. 1014 of the Revised Statutes of the United States, for an order removing the defendant Peckham from said District to the District of Columbia for trial on an indictment against the defendant found in said district for an alleged offense against the United States, and also a proceeding on the return of a writ of habeas corpus to inquire into the legality of the detention and imprisonment of said defendant by the Marshal of the Northern District of New York.

George B. Curtiss, U. S. Attorney, for the U. S.

Nash Rockwood, with Mr. Davis, of Counsel for defendant.

RAY, *District Judge:*

The defendant with another person, was indicted in the District of Columbia for an offense alleged to have been committed by him and such other person at that District. The indictment was found at the April Term of the Court, which Term continued until the

indictment was presented some considerable time later. The
599 defendants were not in the District of Columbia at the time the indictment was found or at the time the warrant for their arrest was issued — of the Supreme Court in said District, but were in the State of New York where they reside. Bench warrants for their arrest *was* issued out of the Supreme Court of the District of Columbia, and with a duly authenticated copy of the indictment, were sent to the proper officers of the Northern District of New York for the purpose of having the proceedings under the law taken to apprehend the defendants and remove them to the District of Columbia for trial.

The defendant, Peckham was found at Saratoga Springs, in the Northern District of New York and a complaint in due form was made before the United States Commissioner at said place, and upon such complaint a warrant for the apprehension of said Peckham was requested. Peckham was arrested by the United States Marshal for the Northern District of New York on the warrant issued by the Commissioner and a time and place fixed for the examination. On such examination the Government of the United States was represented by George B. Curtiss, United States Attorney for said District, and the defendant was represented by Hon. Nash Rockwood, who appeared as his attorney and counsel. The defendant objected to the jurisdiction on the ground the complaint did not show the commission of an offense, but the objection was overruled. The defendant Peckham then pleaded not guilty to the charge made and demanded an examination. His right to an examination was conceded and such examination was proceeded with. The defendant ad-
600 mitted his identity—that is that he was the person named in the complaint and in the indictment which accompanied the complaint and formed a part thereof. A duly authenticated copy of the indictment was put in evidence to prove the commission of an offense in the District of Columbia and that the defendant was guilty of the commission of such offense or that there was probable cause to believe him guilty.

The matter having proceeded thus far the defendant waived further examination, whereupon the commissioner held and decided on the concession of identity and on the indictment as evidence that the crime charged therein had been committed and that the acts stated therein to have been done by the defendant constituted a crime against the United States, and that there was reasonable cause and ground to believe that the defendant was guilty of the commission of such crime within the District of Columbia at the time charged in the indictment. The Commissioner fixed bail. Thereupon the defendant then and there before the Commissioner elected to give bail to appear and answer said charge before the Supreme Court of the District of Columbia in said District, and he entered into the usual bond required by the statute in such cases. He also expressly reserved the right to demur to or question in any way the sufficiency of the indictment in the Courts of the District of Columbia.

Having entered into this bond as required by law and by the Commissioner, the defendant, Peckham was discharged from custody. Some time elapsed and just before the convening of the court in

the District of Columbia, where the defendant was to appear
601 for trial, his bondsmen surrendered him under the provisions of Section 1018 of the Revised Statutes of the United States. The provisions of the Statutes were complied with, and thereupon the Commissioner made and signed a new commitment reciting the facts; reciting the giving and acceptance of the bond; the discharge of the defendant; the surrender of the defendant by his bail, and the acceptance of such surrender, and by such commitment the defendant Peckham was committed to the custody of the United States Marshal of the Northern District of New York and the Marshal was directed to take him into custody. Pursuant thereto the Marshal did take the defendant into custody, and, not having given bond to appear for trial in the District of Columbia he is now held by the Marshal under and pursuant to the terms of and by authority of such commitment made on the surrender of the defendant by his bail. On these facts and with the matter in this condition the writ of habeas corpus was sworn out. The petition for the writ sets forth all the proceedings. The office of the writ is to inquire into the legality of the detention and holding of the defendant.

While this proceeding in the Norther- District of New York was in this condition, or at some time during the pendency of the proceedings, the Government of the United States obtained in the District of Columbia another indictment against the same defendants for substantially the same offense. The subsequent indictment is fuller and more complete and perfect perhaps in its statements. A warrant for the arrest of the defendants was issued out of the Supreme
602 Court of the District of Columbia on the new indictment, and they at the time being in the Southern District of New York were there arrested on a complaint duly made and warrant issued by a Commissioner of the United States. They were taken before such Commissioner and an examination had, and on such examination, the new indictment being in evidence, they were discharged. The Commissioner held that the facts stated in the new indictment, conceding them to be true, did not show that any offense against the United States had been committed and that, therefore, they should not be held and could not be held or removed for trial to the District of Columbia.

The office of a writ of habeas corpus in such a case as this is to inquire into and determine the legality of the holding of a defendant by the officer in whose custody he is. The Commissioner in the Northern District of New York, with the indictment before him, identity being conceded, held and determined and entered judgment accordingly, 1, that a crime against the United States had been committed in the District of Columbia at the time stated in the indictment, and 2, that the defendant Peckham was one of the persons alleged in the indictment to have committed that crime, and, 3, that there was probable cause to believe and grounds for believing that he was guilty of the offense charged in the indictment.

The only evidence as to the commission of the crime charged in the indictment, if it charged a crime, was the indictment itself, and the only evidence of probable cause was the allegations of the in-

dictment. The defendant had it within his power to question
603 the validity and legality of this holding by the Commissioner. It was within his power by writ of habeas corpus and writ of certiorari to bring the whole record before either the Circuit or District Court for review. Had he done so and had the Court issuing the writ held that there was no evidence of the commission of a crime or that there was no evidence that the defendant was probably guilty of the commission of a crime as charged in the indictment or that the indictment did not charge a crime, it would have so determined and would have ordered the discharge of the defendant. It was within the power of either of these courts to in effect nullify the decision and holding of the Commissioner. This course was not pursued, and the finding and determination of the Commissioner stands. The defendant elected to give bail for his appearance for trial in the District of Columbia and did give such bond, and clearly while under bond he could not have reviewed the holding and determination of the Commissioner on habeas corpus aided by a writ of certiorari bringing up the record. True, in a sense he was in the custody of his bail. They had a right to arrest and surrender him at any time pursuant to the provisions of Sec. 1018 of the Revised Statutes (Taylor v. Taintor, 83 U. S. (16 Wall.), 336, 371) but before surrender and while enlarged on bail the writ of habeas corpus would not have issued to inquire into the legality of his detention, &c. (Hurd on Habeas Corpus (2d Ed.), 201; Doge's Cases, 6 Mart. Law Rep., 569; & Rawle, 356; 15 Am. & Eng. Enc. of Law, 159).

The proceeding by the bail of the defendant surrendering him was and is an independent proceeding specially provided for by Sec. 1018 of the Revised Statutes U. S., and by virtue of that proceeding
604 and its validity the defendant is now in custody and held by the Marshal. Having waived further examination and having elected to give bail and having given bail to appear for trial in the District of Columbia, it was too late then to question the validity of the decision made by the Commissioner in the Northern District of New York that a crime had been committed; that the defendant was the person charged with the commission of the offense, and that there was reasonable cause and ground to believe him guilty. The defendant is now held under and by virtue of the proceedings had on the surrender of the defendant by his bail, and if that proceeding was regular and his surrender legal and legally made, then he is legally in the custody of and is legally held by the Marshal of the Northern District of New York. That proceeding is held to have been regular, and the defendant is therefore lawfully held by the Marshal and lawfully deprived of his liberty. Further than that the Court cannot go, for it finds the cause of his detention and imprisonment to be legal. It was within the power of the defendant to have waived an examination entirely and to have given bail for his appearance in the District of Columbia, there to stand trial on the charge of crime alleged in the indictment. Had he done so and had he subsequently been surrendered by his bail, it is clear that he could not have demanded an examination. It would have been too late to make such a demand, and the Commissioner, in case such a

deman- had then been made, would have been under no obligation to grant it.

605 The statute for the removal of a defendant indicted in one district of the United States and found in another to the district where indicted for trial makes it the duty of the District Judge of the district where apprehended seasonably to grant an order of removal whenever the Commissioner has held and decided that an offense was committed as charged in the indictment and that there is reasonable ground to believe the defendant guilty of the commission of such offense. The District Judge, as such on the application for a warrant of removal, when confronted by such a decision and holding of the Commissioner, has no power or right to inquire into the validity of the holding of the Commissioner except so far as to look at the face of the commitment itself and determine whether it recites a legal proceeding and determination. If the decision or determination of the Commissioner made on the hearing remains, is prima facie valid, and has not been set aside or overthrown by the decision of a higher tribunal, the Judge must regard it as final and conclusive on the application for a warrant of removal. In short, when applied to for a warrant of removal the Judge as such has no power to review, annul or disregard the determination of the Commissioner. The District Court or the Circuit Court may on habeas corpus review those proceedings, and if either of those Courts in the proper proceedings determines that no crime has been committed or that there was no evidence of probable cause against the defendant then it would be its duty to so find and hold

606 and order the discharge of the defendant. Here the right to such a review of that holding was waived or abandoned when the defendant elected to give bail for his appearance and trial in the District of Columbia. I am aware that it has been held that on the application for the order or warrant of removal, the Judge, no writ of habeas corpus having issued, may inquire into the validity of the whole proceeding before the Commissioner. With such holdings this Court does not agree.

It is now contended that the Government has abandoned the first indictment under which Peckham was arrested and held to bail in the Northern District of New York. I find no evidence that it has been abandoned. It has not been dismissed. The Government is pressing the proceeding and insisting that the defendant be sent to the District of Columbia for trial under the indictment. It is true that another indictment was found for the same offense apparently. It is true that in the Southern District of New York a Commissioner of the United States held that that indictment did not state facts which if conceded to be true, show the commission of an offense in the District of Columbia by the defendant, and therefore he discharged the defendant. That action by the Commissioner in the Southern District of New York would not be binding upon either the Circuit or District Court in the Northern District of New York were the record before either of those courts on a review of the legality of the decision of the Commissioner in the Northern District

of New York. But that decision of the Commissioner in the
607 Northern District is not under review, and this Court has no jurisdiction at this stage to review that decision. The Court can inquire now into the legality of the detention of the defendant only. The defendant is detained and deprived of his liberty by reason of a commitment issued by a United States Commissioner in the proceeding had and taken on his surrender by his bail. That proceeding is regular and he is legally held. But the defendant contends that when he was surrendered by his bail, his being under bail being but a continuance of his original imprisonment, he was relegated to the same position and rights he held and had at the time he was held to bail by the Commissioner and before he entered into the bond required. That he then had the right to refuse to give bail and to bring up the whole question of the validity of the holding of the Commissioner by writ of habeas corpus before or at the time the order of the removal was applied for and that, being now in custody, he has the same right. That he could not and has not waived that right. If this contention is true, then defendants in these proceedings may indefinitely postpone and delay removal to the district where the indictments is found. The defendant when arrested and brought before the Commissioner will waive examination. If held to bail, he will give it, and when the Court at which he is to appear and answer is about to convene he will procure his bail to surrender him and then demand an examination and sue out a writ of certiorari and a writ of habeas corpus and compel the Court to enquire into the legality of the proceedings, including the validity of the indictment and the jurisdiction of the Com-
608 missioner. If judgment goes against him and the writ is dismissed, and a warrant of removal is granted he may appeal, and if the order dismissing the writ is affirmed he is entitled to then give bail for his appearance in the Court where the indictment was found. When that Court is about to convene he may procure another surrender by his bail and sue out another writ. Quite likely this writ will be dismissed, but in the meantime witnesses may die or go beyond the jurisdiction of the Court and the administration of justice be greatly delayed if its ends are not wholly defeated.

It seems to this Court plain that when the defendant has waived examination and given bail or given bond after examination he has waived his right to the writ for the purposes mentioned, the rights to have the Courts of the District where arrested inquire into the validity of the holding of the Commissioner, and that it is the duty of the District Judge to grant the order of removal in case the defendant is surrendered by his bail or fails to appear for trial in the jurisdiction where the indictment was found and is then arrested on a new warrant. Or is it the law that the defendant may elect to give bail, and having given it fail to appear, and then when arrested have and exercise the same rights he would have had in case the election to give bail had not been exercised?

In Commonwealth v. Nelson G. Green, 185 Pa. St. 611, it was held:

"One who enters into a recognizance to appear at the Quarter Sessions when required, and then, without application to such Court, to correct any error in the proceedings before the Judge sitting as committing magistrate, either in holding him for appearance in Court or in determining excessive bail, voluntarily surrenders himself to the sheriff, is not entitled to a habeas corpus from the Supreme Court."

609 The defendant Peckham is legally held and deprived of his liberty by the Marshal of the Northern District of New York. This Court cannot at this stage enquire into the question whether the indictment charges a crime against the United States. The writ is dismissed, the defendant remanded and the warrant for the removal of the defendant to the District of Columbia for trial under the indictment granted.

Order Dismissing Writ of Habeas Corpus.

Before the Hon. George W. Ray, the United States District Judge in and for the Northern District of New York.

UNITED STATES OF AMERICA
vs.
FREDERICK A. PECKHAM.

The above entitled cause having come on for consideration upon the petition of the said Frederick A. Peckham, dated October 2, 1905, and the exhibits accompanying the same, and on the writ of habeas corpus, issued on the same on the said day, and the return of Clinton D. MacDougall, United States Marshal for the said

610 District, to the said writ, and upon the petition of Hon. George B. Curtiss, United States Attorney in and for said District, for an order for the removal of the said Frederick A. Peckham to the District of Columbia, and having been considered by the Judge,

It is thereupon on this 10th day of January, 1906, adjudged and ordered that the said writ of habeas corpus be, and the same hereby is, dismissed, and that the said Frederick A. Peckham be, and he hereby is, remanded to the custody of the said Marshal, to remain until discharged according to law; and, further, that the said petition for the said order for the removal of the said Frederick A. Peckham be, and the same hereby is, granted.

GEO. W. RAY,
United States District Judge in and for the Northern District of New York.

(Endorsed:) Order Dismissing Writ of Habeas Corpus.—Filed Jan. 10, 1906. W. S. Doolittle, Clerk.

611 *Order of Removal.*

THE UNITED STATES OF AMERICA,
Northern District of New York:

The President of the United States to the Marshal of the Northern District of New York, Greeting:

Whereas, it has been made to appear to me that Frederick A. Peckham is indicted in the Supreme Court of the United States for the District of Columbia for the offense of conspiracy against the United States, in violation of Section 5440 of the Revised Statutes of the United States; and

Whereas, the said Frederick A. Peckham, having been heretofore brought before Charles M. Davison, a United States Commissioner, at Saratoga Springs, in and for the Northern District of New York, upon a warrant duly issued upon a complaint made before said United States Commissioner on the 23d day of August, 1905, charging the said Frederick A. Peckham with having committed said offense, and that an examination was then and there duly had before said United States Commissioner in the presence of said defendant, and that it was sufficiently shown in said examination that the said Frederick A. Peckham is the identical person named in said
612 indictment, and a certified copy thereof furnished probable cause to believe him guilty of the offense therein charged; and

Whereas, the said Frederick A. Peckham, having waived further examination before said Commissioner; and

Whereas, it was thereupon ordered by the said Commissioner that the said Frederick A. Peckham be held for trial upon said indictment, and that said defendant enter into a bond to the United States in the sum of ten thousand dollars ($10,000) with two sufficient sureties for his appearance for trial before said Supreme Court of the District of Columbia on the first Tuesday of October, 1905, the first day of the next term thereof, and thereupon the said Frederick A. Peckham voluntarily gave said bond in the sum of ten thousand dollars ($10,000), with two sufficient sureties conditioned for his personal appearance before the said Supreme Court of the District of Columbia on the first day of the next Term thereof to answer to said indictment, and depart not thence without leave of said Court; and

It further appearing that before the time for the said Frederick A. Peckham to appear for trial in answer to said indictment as aforesaid, and on the 2d day of October, 1905, the sureties upon the said bond of the said Frederick A. Peckham duly caused his arrest before said United States Commissioner, Charles M. Davison, in pursuance of Section 1018 of the Revised Statutes of the United States, and the said Frederick A. Peckham was thereupon duly surrendered
613 to Elmer E. Belden, a United States Deputy Marshal, in and for said Northern District of New York, and by said United States Commissioner then and there, to wit, on the 2d day of October, 1905, by an commitment duly made, committed to the custody of

the United States Marshal in and for the Northern District of New York and his said deputy to remain until discharged according to law, and it having been made further to appear to the undersigned that on the 2d day of October, 1905, a writ of habeas corpus was duly issued out of this Court upon the petition of the said defendant directed to the United States Marshal and his said deputy to inquire into the legality of the detention of the said defendant, and that proceedings under said writ having been duly brought on before me for argument at Utica, within said district, on the 3d day of January, 1906, and that an order was then and there made dismissing said writ of habeas corpus and remanding the said defendant to the custody of Clinton D. MacDougall, the United States Marshal for said Northern District of New York, upon the ground that the detention of the said defendant is lawful, and thereupon a petition, dated the 3d day of January, 1906, was duly presented to the undersigned by George B. Curtiss, the United States Attorney for the said Northern District of New York, asking that bail be fixed for the said Frederick A. Peckham's appearance before the said Supreme Court of the District of Columbia for trial, and that in default of such bail an order be made directing the said United States Marshal of said
614 Northern District of New York to seasonably remove the said defendant and surrender him to the Marshal for the District of Columbia there to be dealt with according to law.

Whereupon, it is hereby ordered by me that the said defendant enter into bond to the United States in the sum of twelve thousand dollars ($12,000.00), with one or more sufficient sureties conditioned for his personal appearance before the said Supreme Court of the District of Columbia, on the first day of the next ensuing Term thereof, to answer said indictment and depart not thence without the leave of said Court, and the said defendant having failed and refused to give bail as required therefor, you are hereby commanded seasonably to remove the said Frederick A. Peckham hence to the said District of Columbia, and there surrender him to the Marshal of that District there to be dealt with according to law.

And make due return of this warrant to the Clerk of the District Court of the United States for the Northern District of New York with true statement of how you have executed the same.

Given under my hand this 11th day of January, 1906.

GEO. W. RAY,
United States District Judge for the Northern District of New York.

615 (Endorsed:) The defendant having taken an appeal from the within order of removal and such appeal having been allowed Ordered that the execution of this order be stayed until the dismissal or determination of such appeal. Geo. W. Ray, U. S. Judge.—Order of Removal.—Filed Jany. 10, 1906.—W. S. Doolittle, Clerk.

Discharge of Recognizance of October 3, 1905.

In the District Court of the United States for the Northern District of New York, this 10th Day of January, 1906.

UNITED STATES
vs.
FREDERICK A. PECKHAM.

Whereas, on, to wit, the 3d day of October, 1905, the above named Frederick A. Peckham, principal, and one Edgar D. Star-
616 buck, and one Will W. Blackmer, sureties, entered into their certain recognizance in the above entitled matter in the sum of twelve thousand dollars ($12,000), upon condition that if the said Frederick A. Peckham should be and appear before the Honorable George W. Ray, United States District Judge, at the United States Court Room, in the City of Auburn, N. Y., on the 16th day of October, 1905, at 2 o'clock P. M., then and there to receive and do what should then and there be enjoined and directed upon him by the said Court, and should not depart the said Court without leave, and should obey all further orders of the said Court, then the said recognizance should be void and of no further force or effect;

And, whereas, the said Frederick A. Peckham has in all things kept, observed and performed the condition of the said recognizance aforesaid;

Now, therefore, it is by the Court adjudged and ordered, that henceforth the said recognizance shall be deemed to be, and shall in fact be, void and of no further force or effect, and that the said Frederick A. Peckham, Edgar D. Starbuck and Will W. Blackmer be, and they and each of them hereby are, severally exonerated, absolved and discharged of and from the said recognizance and all and every obligation by reason thereof.

GEO. W. RAY,
U. S. Judge.

617 (Endorsed:) Discharge of Recognizance of October 3, 1905.—Filed Jan. 10, 1906.—W. S. Doolittle, Clerk.

Petition for Appeal.

Before the Honorable George W. Ray, United States District Judge in and for the Northern District of New York.

Misc. No. 286

In the Matter of the Application of FREDERICK A. PECKHAM for a Writ of Habeas Corpus.

Frederick A. Peckham, the petitioner above named, conceiving himself aggrieved by the final order heretofore made and entered

by this Court, in the above entitled proceeding, on the 10th day of January, 1906, dismissing the writ of habeas corpus, heretofore granted herein, directed to Honorable Clinton D. MacDougall, United States Marshal for the Northern District of New York, and to Elmer E. Belden, a deputy of the said marshal, requiring the said
618 marshal and his said deputy to bring and have your petitioner before the Honorable George W. Ray, United States District Judge for the Northern District of New York, at the United States Court Room in the City of Auburn, Northern District of New York, on the 3d day of October, 1905, at two o'clock P. M., to do and receive what should then and there be considered concerning said Frederick A. Peckham, and remanding your petitioner to the custody of the said marshal and granting an order for the removal of your petitioner to the District of Columbia, hereby appeals from said final order to the United States Circuit Court of Appeals in and for the Second Circuit of the said United States under and according to the laws of the United States in that behalf made, and for the reasons set forth and specified in the assignment of errors filed herewith, and prays that this appeal may be allowed, and that a transcript of the record, papers and proceedings upon which said order was made, duly authenticated, may be sent to the said United States Circuit Court of Appeals for the said Second Circuit.

Your petitioner is advised by his counsel, and verily believes that the proceedings referred to in his said petition for the writ of habeas corpus herein, have infringed his constitutional rights, and that his commitment and the restraint of his person are without authority of law, and that the United States Commissioner, Charles M. Davison, before whom the said petitioner was arraigned, as set forth in said petition for the writ of habeas corpus above referred to,
619 had no authority to issue a warrant for the arrest of the said petitioner, or to commit him, and the petitioner desires in good faith to submit his rights and the constitutional questions, and other questions involved herein to the said United States Circuit Court of Appeals for its determination.

The petitioner further prays that he may be enlarged upon bail pending the determination of said appeal and until the further order of the Court in the premises.

And your petitioner will ever pray.

FREDERICK A. PECKHAM,
Petitioner.

ROCKWOOD & SALISBURY,
Attorneys for Petitioner, 378 Broadway,
Saratoga Springs, N. Y.

UNITED STATES OF AMERICA,
Northern District of New York, ss:

Frederick A. Peckham, being duly sworn, deposes and says: That he has read the foregoing petition by him subscribed, and knows the contents thereof, and that the same is in all respects
620 true.

FREDERICK A. PECKHAM.

Subscribed and sworn to before me this 10th day of January, 1906.

G. W. HIGGINSON,
Notary Public, Oneida Co., N. Y.

The foregoing petition of appeal is granted and allowed, and it is ordered that the petitioner, Frederick A. Peckham, pending said appeal, be enlarged upon bail in the sum of twelve thousand dollars, and that a certified transcript of the record and proceedings herein be forthwith transmitted to the said United States Circuit Court of Appeals in and for the Second Circuit, and that the execution of the order of removal herein be stayed pending the said appeal and until further order.

Done at Utica, N. Y., this 10th day of January, 1906.

GEO. W. RAY,
U. S. Judge.

Please take notice, that the foregoing petition of appeal
621 was allowed this — day of January, 1906, and filed in the office of the Clerk of this Court, and that the petitioner, Frederick A. Peckham, has accordingly appealed to the United States Circuit Court of Appeals in and for the Second Circuit from the order designated in said petition.

ROCKWOOD & SALISBURY,
Attorneys for Petitioner, 378 Broadway,
Saratoga Springs, N. Y.

To Hon. Clinton D. MacDougall, United States Marshal, Northern District of New York.
Hon. Charles M. Davison, United States Commissioner.
Hon. George B. Curtiss, United States Attorney.

Service of a copy of the foregoing petition of appeal and the above notice of allowance this 10th day of January, 1906, is hereby admitted.

C. D. MacDOUGALL,
United States Marshal.

United States Commissioner.
GEO. B. CURTISS,
United States Attorney.

622 *Assignment of Errors.*

Before the Honorable George W. Ray, United States District Judge in and for the Northern District of New York.

Misc. No. 286.

In the Matter of the Application of FREDERICK A. PECKHAM for a Writ of Habeas Corpus.

The petitioner, Frederick A. Peckham, by Rockwood & Salisbury, his attorneys, in connection with his petition of appeal to the United States Circuit Court of Appeals from the final decision of Honorable George W. Ray, United States District Judge, for the Northern District of New York, entered herein on the 10th day of January, 1906, dismissing the writ of habeas corpus and remanding the petitioner to the custody of the United States Marshal, makes and files this, his assignment of errors:

The said Judge erred as follows:

1. In dismissing the writ of habeas corpus, granted herein on the 2d day of October, 1905.

2. In remanding the petitioner to the custody of the said
623 Marshal and ordering his removal to the District of Columbia.

3. In not discharging the petitioner from custody.

4. In not considering the indictment against the petitioner in the proceedings mentioned and holding the same insufficient.

5. In refusing to consider and to pass upon the sufficiency of the said indictment.

6. In not considering the said indictment, and holding and deciding that the same charges no crime or offense against the United States.

7. In not considering the said indictment and holding and deciding that the same is insufficient, in that it fails to set forth facts showing, or tending to show, any violation of a lawful duty upon the part of the petitioner.

8. In not considering all the proceedings before the Commissioner in the said petition mentioned and holding and deciding that there is in the said proceedings no evidence of probable cause warranting the commitment of the petitioner.

9. In holding and deciding that he was without power or authority upon the said petition to consider and pass upon the legal sufficiency or insufficiency of the said indictment.

10. In not considering all the proceedings of and before
624 the said Commissioner, beginning with and including the said indictment and ending with and terminating in the so-called commitment purporting to be set forth in the return.

11. In holding and deciding that the petitioner in entering into the recognizance or undertaking in the said return mentioned thereby waived and lost the right to have the said Judge inquire into, consider and determine the sufficiency or validity of the said indictment and

the proceedings of and before the said Commissioner prior to the time of the making or entering into the said recognizance or undertaking.

12. In not holding and deciding that the said return was and is imperfect and insufficient in law, in that it fails to set forth or show the indictment therein mentioned and the proceedings thereupon and thereunder in such manner as to show any authority or jurisdiction of or in the said Commissioner to order the petitioner to enter into or to give the said recognizance or undertaking, or to make any order respecting the petitioner or his custody.

13. In not holding and deciding that the petitioner is unlawfully restrained of his liberty.

14. In not holding and deciding that the petitioner is deprived of his liberty without due process of law within the meaning of
625 the fifth amendment to the United States Constitution.

FREDERICK A. PECKHAM,
Petitioner.

ROCKWOOD & SALISBURY,
Attorneys for Petitioner, 378
Broadway, Saratoga Springs, N. Y.

(Endorsed:) Petition for Appeal and Assignment of Errors. Filed Jan. 10, 1906.—W. S. Doolittle, Clerk.

Undertaking on Appeal.

Before the Honorable George W. Ray, United States District *Court* for the Northern District of New York.

In the Matter of the Application of FREDERICK A. PECKHAM for a Writ of Habeas Corpus.

626 Be it remembered, that on the 10th day of January, 1906, before me, George W. Ray, Judge of the District Court of the United States for the Northern District of New York, personally came Frederick A. Peckham, as principal, and the American Bonding Company of Baltimore, as surety, and severally acknowledged themselves to be indebted to the United States of America in the full sum of two hundred and fifty dollars to the payment of which well and truly to be made they bind themselves and each of them, their heirs, executors, administrators and successors jointly and severally firmly by these presents to be levied and made of their respective goods, chattels, lands and tenements to the said United States if default be made in the condition following, to-wit:

Whereas, the said George W. Ray, District Judge as aforesaid, has made his order discharging the writ of habeas corpus heretofore granted on the 2d day of October, 1905, on the application of the said Frederick A. Peckham and has remanded the said Frederick A. Peckham to the custody of Clinton D. MacDougall, the United States Marshal for the Northern District of New York, and has ordered the said Frederick A. Peckham to be delivered into the custody of the said Marshal for removal to the District of Columbia;

and whereas, the said Frederick A. Peckham has appealed from said order dismissing said writ and so remanding said Peckham to said District of Columbia, and whereas the said Honorable George W. Ray, Judge as aforesaid, did thereupon allow such an appeal and
627 order that pending such appeal all proceedings upon said order for removal be stayed, and that the said Frederick A. Peckham be enlarged upon bail in the sum of twelve thousand dollars for his appearance to answer the exigency and termination of said appeal and personally to abide the final decision and determination of the Circuit Court of the United States for the Second Circuit in that behalf.

Now, therefore, the condition of this obligation is such that if the said Frederick A. Peckham shall prosecute his said appeal to effect, or in default thereof pay and discharge all costs which may be adjudged against him in the premises then this recognizance to be void; otherwise to remain in full force and virtue.

FREDERICK A. PECKHAM.
[L. S.] AMERICAN BONDING COMPANY OF BALTIMORE.
By SEWARD A. MILLER,
Vice-President.

Attest:
JAMES H. MERWIN,
Assistant Secretary.

Taken and acknowledged before me the day and year first above written, and approved as to form, amount and surety.

GEO. W. RAY,
U. S. Judge, Northern District of New York.

628 *Extracts from Charter of the American Bonding Company of Baltimore.*

"The said Company shall be and is hereby authorized and empowered to insure the fidelity of persons holding places of trust or responsibility to or under any State, County, City, Corporation, Company, person or persons whatsoever; to become security for the faithful performance of any trust, office, duty, contract or agreement, and to supersede any judgment or to go upon any appeal or other bond."

* * * * * * *

"That the directors shall * * * elect from their number * * * an Executive Committee."

"The Executive Committee so chosen * * * shall have power to elect non-resident local boards, non-resident local Vice-Presidents and non-resident local Assistant Secretaries * * * with power to sign and deliver bonds and suretyship and other obligations for and on behalf of and in the name of said Company, to the same effect and with the same binding obligations as if the said in-

struments had been executed by the President or Vice-President and Secretary or Assistant Secretary. * * *"

* * * * * * *

"That the name of the said body corporate is * * * changed from 'the American Bonding and Trust Company of Balti-
629 more City' to the 'American Bonding Company of Baltimore.'"

* * * * * * *

Extract from Minutes of a Meeting of the Executive Committee, Held at the Office of the Company, at Baltimore, Maryland, on the Twenty-ninth Day of December, 1904.

* * * * * * *

Mr. Charles A. Webb presented the following resolution, seconded by Mr. James S. Woodside:

"Preamble.—Whereas: In virtue of certain resolutions dated February 19th, 1904, Wm. L. Foley and T. Harvey Ferris were declared appointed or elected Vice-Presidents and John P. Gomph was declared appointed or elected Assistant Secretary to serve in the City of Utica, State of New York, Now, Therefore:

"Resolved, That said appointment or election of said persons, for reason, is hereby declared null and void, and all powers granted under said resolutions are hereby revoked, to more definitely determine the purpose and intention of said annullment and revocation, Be it further;

"Resolved: that there is hereby nominated for non-resident local officers to serve at Utica, Oneida County, New York, the following:

Vice Presidents: T. Harvey Ferris and Seward A. Miller; Assistant Secretaries: James H. Merwin and A. G. Senior, and there is hereby vested in said T. Harvey Ferris and Seward A. Miller as Vice-Presidents, and in each of them, full right, power, and author-
630 ity to execute, sign, seal and deliver in the name and on behalf of said Company any and all Bonds, Obligations, or Undertakings (other than appeal and supersedeas bonds) required in Judicial Proceedings, in any and all Courts in said State of New York, and in the United States Circuit and District Courts in said State, when attested by the signature of James H. Merwin or A. G. Senior as Assistant Secretary."

And on ballot, a majority of the whole committee having voted in the affirmative, the said resolution was adopted, and the aforesaid nominees were declared to be duly elected as such officers of the company, with powers as aforesaid.

Certificate.

I, C. R. Laurenson, Ass't Secretary of the American Bonding Company of Baltimore, hereby certifies that the foregoing are true and correct copies taken from the records of the American-Bonding Company of Baltimore.

In witness whereof, I have hereunto subscribed my name and affixed the corporate seal of the American Bonding Company of Baltimore at Baltimore, Maryland, this 16th day of January, 1905.

[L. S.] C. R. LAURENSON,
Assistant Secretary.

NOTICE.—This power does not cover the execution of appeal or supersedeas bonds, and you are warned against executing same.

(Endorsed:) Undertaking on Appeal.—Filed Jan. 10, 1906.—W. S. Doolittle, Clerk.

631 *Supersedeas Bond.*

Before the Hon. George W. Ray, United States District *Court* for the Northern District of New York.

In the Matter of the Application of FREDERICK A. PECKHAM for a Writ of Habeas Corpus.

Be it remembered that on the 10th day of January, 1906, before me, George W. Ray, Judge of the District Court of the United States for the Northern District of New York, personally came Frederick A. Peckham, as principal, and the American Bonding Company of Baltimore, as surety, and severally acknowledged themselves to be indebted to the United States of America in the full sum of twelve thousand dollars to the payment of which well and truly to be made, they bind themselves, and each of them, their heirs, executors, administrators and successors jointly and severally firmly by these presents, to be levied and made of their respective goods, chattels, lands and tenements to the said United States, if default be made in the condition following, to wit:

Whereas, the said George W. Ray, District Judge, as aforesaid, has made his order dismissing the writ of habeas corpus
632 heretofore granted on the 2d day of October, 1905, on the application of the said Frederick A. Peckham, and has remanded the said Frederick A. Peckham to the custody of Clinton D. MacDougall, the United States Marshal for the Northern District of New York, and has ordered the said Frederick A. Peckham to be delivered into the custody of the said Marshal for removal to the District of Columbia; and whereas, the said Frederick A. Peckham has appealed from said order dismissing said writ and so remanding said Peckham to said District of Columbia; and whereas, the said Honorable George W. Ray, Judge, as aforesaid, did thereupon allow such an appeal and order that pending such appeal all proceedings upon said order for removal be stayed and that the said Frederick A. Peckham be enlarged upon bail in the sum of twelve thousand dollars for his appearance to answer the exigency and termination of said appeal and personally to abide the final decision and determination of the Circuit Court of the United States for the Second Circuit in that behalf.

Now, therefore, the condition of this obligation is such that if the said Frederick A. Peckham shall duly personally appear before the said Honorable George W. Ray, United States District Judge for the Northern District of New York, to answer the exigency and determination of said appeal and personally abide the final decision and determination of the said Circuit Court of Appeals, and of him, the said Honorable George W. Ray, Judge, as aforesaid, upon the mandate of the said Circuit Court of Appeals, and obey and
633 abide the order or orders of the said Hon. George W. Ray, Judge as aforesaid, and not depart the Court without leave upon the conditions aforesaid and upon the entry of said orders upon said appeal, then this recognizance to be void, otherwise to remain in full force and virtue.

FREDERICK A. PECKHAM.
AMERICAN BONDING COMPANY
OF BALTIMORE. [L. S.]
By SEWARD A. MILLER, *Vice-President.*

Attest:
JAMES H. MERWIN,
Asst Secretary.

Taken and acknowledged before me the day and year first above written, and approved as to form, amount and surety.

GEO. W. RAY,
U. S. Judge, North'n Dist. N. Y.

Extracts from Charter of the American Bonding Company of Baltimore.

"The said Company shall be and is hereby authorized and empowered to insure the fidelity of persons holding places of trust or responsibility to or under any State, County, City, Corporation, Company, person or persons whatsoever; to become security
634 for the faithful performance of any trust, office, duty, contract or agreement, and to supersede any judgment or to go upon any appeal or other bond."

* * * * * * *

"That the directors shall * * * elect from their number * * * an Executive Committee."

"The Executive Committee so chosen * * * shall have power to elect non-resident local boards, non-resident local Vice-Presidents and non-resident local Assistant Secretaries * * * with power to sign and deliver bonds of suretyship and other obligations for and on behalf of and in the name of said Company, to the same effect and with the same binding obligations as if the said instruments had been executed by the President or Vice-President and Secretary or Assistant Secretary." * * *

* * * * * * *

"That the name of the said body corporate is * * * changed from 'The American Bonding and Trust Company of Baltimore City' to the 'American Bonding Company of Baltimore.'"

* * * * * * *

Extract from Minutes of a Meeting of the Executive Committee, Held at the Office of the Company, at Baltimore, Maryland, on the Twenty-ninth Day of December, 1904.

Mr. Charles A. Webb presented the following resolution, seconded by Mr. James S. Woodside:

635 "Preamble—whereas: In virtue of certain resolutions dated February 19th, 1904, Wm. L. Foley and T. Harvey Ferris were declared appointed for elected Vice-Presidents and John P. Gomph was declared appointed or elected Assistant Secretary to serve in the City of Utica, State of New York; now, therefore,

"Resolved, That said appointment or election of said persons for reason, is hereby declared null and void, and all powers granted under said resolutions are hereby revoked; to more definitely determine the purpose and intention of said annulment and revocation, be it further,

Resolved, That there is hereby nominated for non-resident local officers to serve at Utica, Oneida County, New York, the following:

Vice-Presidents: T. Harvey Ferris and Seward A. Miller;

Assistant Secretaries: James H. Merwin and A. G. Senior, and there is hereby vested in said T. Harvey Ferris and Seward A. Miller as Vice-Presidents, and in each of them, full right, power and authority to execute, sign, seal and deliver in the name and on behalf of said Company any and all Bonds, Obligations or Undertakings (other than appeal and supersedeas bonds) required in Judicial Proceedings, in any and all Courts in said State of New York, and in the United States Circuit and District Courts in said State, when attested by the signature of James H. Merwin or A. G. Senior as Assistant Secretary."

And on ballot, a majority of the whole Committee having
636 voted in the affirmative, the said resolution was adopted, and the aforesaid nominees were declared to be duly elected as such officers of the Company with powers as aforesaid.

Certificate.

I, C. R. Laurenson, Assistant Secretary of the American Bonding Company of Baltimore, hereby certify that the foregoing are true and correct copies taken from the records of American Bonding Company of Baltimore.

In witness whereof, I have hereunto subscribed my name and affixed the corporate seal of the American Bonding Company of Baltimore, at Baltimore, Maryland, this 16th day of January, 1905.

[L. S.] C. R. LAURENSON,
Assistant Secretary.

NOTICE.—This power does not cover the execution of appeal or supersedeas bonds, and you are warned against executing same.

(Endorsed:) Supersedeas Bond.—Filed Jan. 19, 1906.—W. S. Doolittle, Clerk.

637 THE UNITED STATES OF AMERICA, *ss.:*

The President of the United States of America to the Honorable George B. Curtiss, United States Attorney for the Northern District of New York, Charles M. Davison, Esq., United States Commissioner for the Northern District of New York, Clinton D. MacDougall, Esq., United States Marshal for the Northern District of New York, and Elmer E. Belden, Esq., a Deputy of said United States Marshal:

You are hereby cited and admonished to be and appear at a Circuit Court of Appeals of the United States at the City of New York, State of New York, within thirty days from the date of this citation, pursuant to an appeal duly allowed by the United States District Judge for the Northern District of New York, filed in the Clerk's office of the District Court of said District on the 10th day of January, 1906, in a cause entitled "In the Matter of the Application of Frederick A. Peckham for a Writ of Habeas Corpus," Miscellaneous, No. 285, to show cause, if any, why the final order of said District Judge rendered against the said petitioner, as in his petition of appeal mentioned, should not be corrected, and why speedy justice sh[illegible] so not be done to the petitioner in that behalf.

Witness the Honorable George W. Ray, United States Judge for the Northern District of New York, this 10th day of January, 1906.

GEO. W. RAY,
U. S. Judge.

638 Due and proper service of the above is acknowledged this 10th day of January, 1906.

GEO. B. CURTISS,
U. S. Attorney.

(Endorsed:) United States District Court, Northern District of New York. In the Matter of Frederick A. Peckham. (Habeas Corpus.) (Original) Citation on Appeal. Rockwood & Salisbury, Attorneys for Petitioner, 378 Broadway, Saratoga Springs, N. Y. U. S. District Court, N. D. of N. Y.—Filed Jan. 10, 1906, at — o'clock M.—W. S. Doolittle, Clerk.

UNITED STATES OF AMERICA,
Northern District of New York, ss.:

I, William S. Doolittle, Clerk of the District Court of the United States of America, for the Northern District of New York, in the Second Circuit, do hereby certify that the foregoing pages, numbered from 1 to 105 inclusive, contain a true and complete transcript of the record and proceedings had in said Court, In the Matter of the Application of Frederick A. Peckham for a writ of habeas corpus, as the same remain of record and on file in said office.

In testimony whereof, I have caused the seal of the said
639 Court to be hereunto affixed, at the City of Utica, in the Northern District of New York, in the Second Circuit, this twenty-fifth day of January, in the year of our Lord, one thousand

nine hundred and six, and of the Independence of the said United States the one hundred and thirtieth.

[SEAL.] W. S. DOOLITTLE, *Clerk.*

640 United States Circuit Court of Appeals for the Second Circuit.

FREDERICK A. PECKHAM, Appellant,
vs.
THE UNITED STATES, Appellee.

Motion for Certiorari.

Nash Rockwood, Attorney for Frederick A. Peckham, 378 Broadway, Saratoga Springs, N. Y.

641 *Notice of Motion.*

United States Circuit Court of Appeals for the Second Circuit.

FREDERICK A. PECKHAM, Appellant,
against
THE UNITED STATES, Appellee.

To J. C. Reynolds Esq., Special Assistant to the Attorney-General, and to Hon. George B. Curtiss, United States Attorney, Northern District of New York.

SIRS: Please take notice, that the above motion in the above entitled cause and court will be presented to the Circuit Court of Appeals for the Second Circuit on November 9th, 1908, immediately upon the convening of the Court, or as soon thereafter as counsel can be heard, in the Court Room in the Post Office Building, Borough of Manhattan, New York City, N. Y.

Dated, November 1, 1908.

NASH ROCKWOOD,
Attorney for Frederick A. Peckham, Appellant,
378 *Broadway, Saratoga Springs, N. Y.*

642 *Motion.*

United States Circuit Court of Appeals for the Second Circuit.

FREDERICK A. PECKHAM, Appellant,
vs.
THE UNITED STATES, Appellee.

Comes now Nash Rockwood, of the Village of Saratoga Springs, N. Y., one of the counsel for the above named Frederick A. Peckham, in behalf of the appellant, and moves that a certiorari issue out of and under the seal of this Court, directed to the Clerk of the Dis-

trict Court for the Northern District of New York, commanding the said Clerk to certify and send to this Court on a day certain to be therein designated, a full and complete transcript of all and every part of the record and proceedings of the said District Court for the Northern District of New York, in a case therein entitled "United States vs. Frederick A. Peckham," Misc. No. 286, remaining on file in the office of the Clerk of said Court, and not embodied in the transcript on appeal in the said cause and filed in this Court, consisting the Complaint made by Mark J. Thomas, sworn to before Charles M. Davison, a Commissioner of the District Court of
643 the United States, in and for the Northern District of New York, on the 23rd day of August, 1905, on which the warrant issued by the said Davison and on which the said Frederick A. Peckham was arrested and arraigned before the said Charles M. Davison, as alleged in the petition of the said Frederick A. Peckham, which appears in said transcript on appeal, asking for a writ of habeas corpus to issue therein, which said petition is found on pages 1, 2, 3, 4, 5, and 6 of said transcript on appeal; also the warrant issued by said Commissioner Davison on which said Frederick A. Peckham was arrested and arraigned before said Commissioner, as appears and is set forth in said petition; also the minutes of the proceedings had in said matter before said Commissioner Davison on the 2nd day of October, 1905, when said Frederick A. Peckham was surrendered by his bondsmen, as appears by the affidavit of Nash Rockwood, hereto annexed, upon which said affidavit and all the papers and proceedings herein such motion is made.

Dated November 1, 1905.

NASH ROCKWOOD,
Attorney for Frederick A. Peckham
378 Broadway, Saratoga Springs, N. Y.

To J. C. McReynolds, Esq., Special Assistant to the Attorney-General, and to Hon. George B. Curtis, United States Attorney, Northern District of New York.

644 *Affidavit of Nash Rockwood.*

United States Circuit Court of Appeals for the Second Circuit.

FREDERICK A. PECKHAM, Appellant,
against
THE UNITED STATES, Appellee.

STATE OF NEW YORK,
County of New York, Southern District of New York, ss:

Nash Rockwood, being duly sworn, says that he is one of the counsel for the above named Frederick A. Peckham, and has, at all times since the said Frederick A. Peckham was arrested in August, 1905, by warrant issued by Charles M. Davison, Esq., United States Commissioner, at Saratoga Springs, N. Y., for the crime specified in the petition of said Frederick A. Peckham for a writ of habeas corpus,

which said petition appears and is printed at length in the transcript of record filed in the office of the Clerk of this Court herein, been one of the counsel for said Peckham.

That the transcript of the record as printed and filed in the office of the Clerk of this Court is incomplete deficient, insufficient, inaccurate and erroneous in several respects.

645 That the said Frederick A. Peckham was arrested on the 23rd day of August, 1905, by Elmer E. Belden, a Deputy of the Marshal of the United States, for the Northern District of New York, on a warrant issued by Charles M. Davison, a United States Commissioner, having an office at Saratoga Springs, Saratoga County, N. Y., and taken before said United States Commissioner charged with having committed a criminal act, in that he was alleged to have violated Section 5440, as amended, of the Revised Statutes of the United States of America.

That said warrant, issued as aforesaid by said United States Commissioner, was issued on a sworn complaint, made and sworn to before the said Commissioner on said 23rd day of August, 1905, by one Mark J. Thomas; that said Frederick A. Peckham, was, on said day, taken before said United States Commissioner Davison, and after examination and certain proceedings had before said Commissioner, which appear on pages 8, 9, and 10 of said transcript of record filed herein, was admitted to bail in the sum of Ten Thousand Dollars ($10,000.) with Edgar D. Starbuck and Will W. Blackmer as sureties, for his appearance on the first day of the next term of the Supreme Court of the District of Columbia, then and there to answer to said indictment, etc., which said undertaking on bail is found on pages 11, 12, and 13 of said transcript of record filed in the office of the Clerk of this Court herein.

That thereafter and on the 2nd day of October, 1905, the said Edgar D. Starbuck and Will W. Blackmer appeared before
646 said United States Commissioner with the body of the said Frederick A. Peckham and then and there surrendered the body of said Frederick A. Peckham to Elmer E. Belden, Field Deputy of the United States Marshal of the United States for the Northern District of New York, and surrendered and delivered the said body of said Peckham to said Marshal and asked that said Commissioner endorse upon the certified copy of said bond which was then and there produced before the said United States Commissioner, an exonerator of said bail, and said United States Commissioner then and there, in pursuance of the provisions of 1018 of the Revised Statutes of the United States, at the request made as aforesaid of said bondsmen, being present in person, before said Commissioner, and the United States Field Marshal, Elmer E. Belden, did accept such surrender and discharge and exonerate the bail upon the bond of said Frederick A. Peckham heretofore given before said Commissioner in the sum of Ten Thousand Dollars ($10,000.) by said Edgar D. Starbuck and Will W. Blackmer as sureties, and did then and there endorse upon the certified copy of the recognizance then produced before him, the exoneration and discharge of said bail.

That certain other proceedings were then and there had before said Commissioner in respect to withdrawing the plea of not guilty

entered before said Commissioner by said Peckham in August, 1905,
on the ground that the same was unauthorized and that said
647 Commissioner had no jurisdiction to accept such plea, and
did request said Commissioner to proceed with the examination of the said Frederick A. Peckham to ascertain if there was any probable cause to believe him guilty of any offense against the United States of America; that said Commissioner denied such request, stating that an examination having been once had the power in the Commissioner was exhausted and that he had no inherent power in himself to institute a new examination except by an order of a superior judge or court, to which ruling of said Commissioner said Frederick A. Peckham, by his said Counsel, Nash Rockwood, then and there duly excepted.

That certain other proceedings were had before said Commissioner on the 2nd day of October, 1905, in which said Frederick A. Peckham asked to have the return of said Commissioner, made by him of the proceedings had in August, 1905, show in substance that on said hearing and proceedings in August, 1905, said Peckham reserved to himself the right to withdraw his plea of not guilty, then entered by him, at any and all times, and to demur to the indictment, and challenge or object to the jurisdiction of the Court to proceed against him at any and all times, and that all of said defendant's rights were then and there expressly reserved by said Commissioner.

That deponent on or about the 29th day of October, 1908, called the attention of Hon. George W. Ray, United States Judge, to the omission from the printed record on appeal herein of said original warrant, of said original complaint, and of copies of the pro-
648 ceedings had before the United States Commissioner on October 2, 1905; that Judge Ray recalled that said papers were used before him on the argument for application for writ of habeas corpus, and executed and delivered to this deponent his certificate, setting forth said fact.

Thereupon said Certificate of Hon. George W. Ray together with a copy of the original warrant issued by United States Commissioner Davison, the original complaint filed with United States Commissioner Davison on the 23rd day of August, 1905, and the said original copies of proceedings had before United States Commissioner Davison on October 2, 1905, were filed in the office of the Clerk of the United States District Court for the Northern District of New York on the 31st day of October, 1908, at ten o'clock A. M. of that day and a certificate of said fact procured from said Clerk.

That said papers were not originally filed with said Clerk through inadvertence, although all of the same were used before Judge Ray upon the original argument and are referred to in Judge Ray's opinion.

That annexed hereto and made a part hereof is the certificate of said William S. Doolittle, Clerk of the United States District Court for the Northern District of New York, dated the 31st day of October, 1908, to the effect that said papers were filed in his said clerk's office as herein set forth.

Deponent further says that none of the aforesaid papers appear in or are made a part of said printed record on appeal herein filed

in the office of the Clerk of the Court, for the reason that the same were inadvertently omitted.

649 Deponent further says that said printed transcript of record in this court herein is insufficient, incomplete, defective and erroneous in the following particulars:

On page 9 of said printed record, in the 14th line from the top of said page, the record should read "does not comply with the statute" instead of "does comply with the statute" as the record has it, as will appear from an inspection of the original return of said Commissioner Davison.

On page 18 of said printed record, the date in the authentication is stated as "22nd day of August, 1905," whereas it should be "14th day of October, 1905," as will appear by reference to said original authentication.

On page 19 of said printed record, in the 14th line from the top of said page, the printed record reads "22nd day of August, 1905," whereas it should be "14th day of October, 1905," as will appear from an inspection of the original paper.

On page 19 of said printed record, in the 15th line, the date is stated as the "22nd day of August, 1905," whereas it should be and is the "14th day of October, 1905," in the original paper.

On page 23 of said printed record, in the first line, the word "combine" appears, whereas the same does not appear in the certified copy of the indictment furnished by said Clerk to deponent.

In the 3rd line from the top of page 34 of said printed record, it reads "this is from 814," whereas it should be and is "that is from 814" in the certified copy of the indictment.

650 In the 3rd line from the bottom of page 36 of said printed record it reads "189 Fulton Street," whereas it should be and is "108 Fulton Street" in the certified copy of the indictment furnished to deponent by the Clerk of said District Court.

On page 39 of said printed record and in the 23rd line (10th line from the bottom), the word "confederation" appears, whereas it is not found and does not appear in said certified copy of said indictment furnished as aforesaid to deponent by said Clerk.

On page 40 of said printed record and in the first line, the date is stated as "Dec. 20th," whereas it should be and appears in the original of said indictment as "Dec. 30th"—from the bottom, it reads "838,222.90," whereas it should be and is in the original "838,292.90."

On page 56 of said printed record, in the 9th line from the top of the page, it should be "stipulated" instead of "stipulation," as reference to the original stipulation filed will appear.

On page 59 of said printed record, in the 5th line from the bottom of said page, it should read "Frederick A. Peckham" instead of "Frederick A. Peck," as will appear from the original paper filed.

On page 60 of said printed record, in the 8th line from the top of the page, it should read "Will" instead of "William" as will appear from an inspection of the original papers filed.

651 On page 88 of said printed record, in the 9th line from the bottom of said page, it should read, "done in open court at

Utica, N. Y." etc., as will appear by reference to said original return on appeal.

On page 88 of said printed record, in the 4th line from the bottom of said page, the word "duly" should be inserted between was and allowed, as will appear by reference to the original paper filed.

On page 91 of said printed record, the figure "8" at the commencement of the fifth paragraph should be "9," as will appear by reference to the original paper.

On page 93 of said printed record, in the 7th line from the bottom of the page, the word "hereto" should be "heretofore," as will appear by reference to said original undertaking filed.

On page 94 of said printed record, all of the 18th 19th and 20th lines as far as the word "then" should be stricken out and instead of the words now constitution and comprising such lines should be inserted these words "duly personally appear before the said Hon. George W. Ray, United States District Judge for the Northern District of New York, to answer the exigency and determination of said appeal, and personally abide the final decision and determination of the said Circuit Court of Appeals, and of him, the said Hon. George W. Ray, Judge as aforesaid, upon the mandate of the said Circuit Court of appeals, and abide the order or orders of the
652 said Hon. George W. Ray, Judge as aforesaid, and not depart the Court without leave upon the condition aforesaid, and upon the entry of said order upon said appeal."

On page 98 of said printed record all of the last three lines of said page, and all of the first, second, third, fourth, fifth, sixth, seventh, eighth and ninth lines, and the words "upon said appeal" in the tenth line of page 99, should be stricken out, and instead thereof should appear and be inserted the words "prosecute his said appeal to effect, or in default thereof pay and discharge all costs which may be adjudged against him in the premises."

Deponent further says that all of said alleged errors and omissions, occurring as aforesaid in said printed transcript of record in this court herein, are important and prejudicial to the rights and interests of said Frederick A. Peckham, and that all of said *papers* and proceedings omitted as aforesaid, from said printed record are material and vital to the interests of said appellant, Frederick A. Peckham, as this deponent verily believes.

Deponent further says that although the said printed transcript of record herein was received by deponent on or about the 29th day of September, 1905, that it was not until a comparatively recent date that deponent discovered all of said errors and omissions in said printed record, for the reason that he did not give said appeal great consideration because, after the proceedings upon which this appeal is based were instituted, and on or about October 2nd, 1905,
653 the Government apparently supplanted and abandoned the indictment herein by another indictment practically covering the same charges as contained in the indictment involved in this appeal, and the argument of this appeal was thereafter continued, for various reasons, including illness and pressure of business of deponent, from term to term by stipulation of counsel, and for the

further reason that although the brief of deponent as counsel for said Peckham on said appeal was duly filed in the office of the Clerk of the Circuit Court of Appeals, the Government's brief was not filed, as I am informed and believe, until the 25th day of May, 1908.

After receiving a copy of the brief of counsel for the Government, I observed that a point was made of the fact that the original warrant and original complaint were not returned as a part of the record on appeal, although said papers were duly used before Judge Ray; and I communicated with Counsel for the Government and said that I would have to move for a writ of certiorari to correct said record unless said papers could be printed and made a part of the record by consent, which has not been given.

On May 29th, 1908, other indictments were returned against said Peckham, both in New York and Washington, for alleged crimes committed in connection with what is known as the "Cotton Leak," and other proceedings to remove said Peckham to Washington are now pending before United States Commissioner Shields in the Northern District of New York.

654 Another reason that inclined me to believe that there was no necessity for any haste in the application for a certiorari to correct this record was that, while the said defendant, Peckham, was under arrest and said proceedings were pending before Judge Ray in the Northern District of New York, said Peckham was arrested and arraigned before United States Commissioner Ridgeway in the Southern District of New York upon a complaint based upon another indictment involving said alleged "Cotton Leak." This proceeding before Commissioner Ridgeway resulted in the discharge of said Peckham on or about October 20th, 1905, while the proceedings before Judge Ray in the Northern District of New York were still pending. Commissioner Ridgeway held that the indictment failed to allege a crime. Proceedings for removal were subsequently, and on January 5th, 1906, instituted against the defendant Haas, jointly indicted with Peckham, before United States Judge Holt, who also discharged the defendant Haas, holding that the indictment did not charge a crime.

It would, in my judgment, seriously prejudice said Peckham in his rights to have said appeal argued without including in the record the said original papers hereinbefore referred to, and it would also be unjust to him because said papers were in fact used before Judge Ray on the argument before him as stated in his certificate hereto attached, and the interests of justice require that said papers should be considered by this Court upon this appeal.

655 Said motion to correct the record could have been made more promptly, but was delayed for the reasons aforesaid, and as the Government was apparently, to all intents and purposes abandoned the indictment upon which these proceedings are based and instituted other removal proceedings upon new indictments, and said Peckham has in the meantime furnished ample bail, and been released from custody, no rights can be lost to the Government by properly correcting the record herein, while great prejudice might be

done to said appellant; if the appeal is to be heard upon the incomplete and imperfect record now existing.

No previous or other application has been made or the order asked hereon.

(S'd) NASH ROCKWOOD.

Subscribed and sworn to before me this 4th day of November, 1908.

(S'd) [L. S.] CHARLES C. LOCKWOOD,
Notary Public of Kings County.

Certificate filed in New York County.

656 UNITED STATES OF AMERICA,
Northern District of New York, ss:

I, William S. Doolittle, Clerk of the District Court of the United States of America for the Northern District of New York in the second circuit, do hereby certify and state that there was filed in my office on the 31st day of October, 1908, at 10 o'clock A. M. of that day, the following papers:

[L. S.]

1. A copy of the original warrant issued by United States Commissioner Charles M. Davison, by virtue of which Frederick A. Peckham was apprehended in a proceeding entitled "United States of America vs. Frederick A. Peckham," which said paper is identified with the initials of Hon. George W. Ray, United States Judge.

2. The original complaint filed with United States Commissioner Charles M. Davison on the 23rd day of August, 1905, in said matter entitled "United States vs. Frederick A. Peckham," marked with the initials of said Hon. George W. Ray, United States Judge.

3. The original minutes of proceedings had before United
657 States Commissioner Davison on October 2, 1905, in the same matter, marked with the initials of Hon. George W. Ray, United States Judge.

4. Certificate of Hon. George W. Ray, United States Judge, dated October 29th, 1908, certifying in effect that said papers were used before him upon the argument of the writ of habeas corpus issued by him in said matter entitled "United States of America vs. Frederick A. Peckham."

I further certify and state that said papers were not returned by me to the Clerk of the United States Circuit court of Appeals upon the appeal in said matter for the reason that the same were not theretofore filed in my office.

I further certify and state that the annexed are true copies of the four papers above described, so filed with me on the 31st day of October, 1908.

Dated, October 31, 1908.
Utica, N. Y.

[SEAL.] (S'g.) W. S. DOOLITTLE, *Clerk.*

658 In the United States District Court for the Northern District of New York.

UNITED STATES OF AMERICA
vs.
FREDERICK A. PECKHAM.

I, George W. Ray, United States Judge for the Northern District of New York, do hereby certify and state that on the argument before me on the writ of *habeas corpus* issued by me in the above entitled matter there was used and considered by me as a part of the papers of the proceeding:

1. The original warrant issued by United States Commissioner Charles M. Davison, by virtue of which the said Frederick A. Peckham was apprehended;

2. The original Complaint and Indictment thereto attached, filed with said United States Commissioner Davison on the 23rd day of August, 1905;

3. Minutes of the Proceedings had before said United States Commissioner on October 2nd, 1905, at Saratoga Springs New York, when said Frederick A. Peckham was surrendered by his bondsmen.

And I further certify and state that I have examined the
659 annexed copy of said original warrant, the annexed original Complaint, and the annexed original "Minutes of Proceedings had before said United States Commissioner on October 2nd, 1905," and that the said papers so annexed hereto were used by me and considered by me in reaching my decision; with the exception that instead of the copy of said warrant, the original warrant was used before me, but the same has been mislaid.

Dated, at the city of New York, this 29th day of October, 1908.

GEO. W. RAY,
U. S. Judge.

660 In the U. S. District Court for the Northern District of N. Y. United States of America vs. Frederick A. Peckham. (Copy) Certificate of Hon. George W. Ray. Nash Rockwood, Attorney for Defendant, Saratoga Springs, N. Y.

661 UNITED STATES OF AMERICA,
Northern District of New York, County of Saratoga:

Before me, Charles M. Davison, a Commissioner of the District Court of the United States in and for the Northern District of New York, came Mark J. Thomas of Washington, D. C., who being duly sworn on his oath says: that he is the United States Agent. That one Frederick A. Peckham of the City, County and State of New York, on or about the 2nd day of June, 1904, in the District of Columbia, United States of America, did then and there knowingly and unlawfully conspire, combine, confederate and agree with one Moses Haas and Edwin S. Holmes, to defraud the said United States in a

dishonest manner, through and by means of a dishonest scheme and arrangement, that is to say:

The said Peckham while associate Statistician in the Department of Agriculture at Washington in the District aforesaid, conspired, combined and confederated and agreed with the persons aforesaid mentioned to rob, defraud and steal from the said United States of America in violation of Section 5440 of the Revised Statutes of the Congress of the United States of America; that on or about the 1st day of April, 1905, the said Peckham was duly indicted by the Grand Jury of the United States in and for the District of Columbia, for the offense above charged; that the allegations of this information are made upon the information and belief of deponent.

662 That the sources of deponent's knowledge and information is derived from information received by him as said officer of the United States and also from a certified copy of the indictment of the Grand Jury aforesaid, now in deponent's possession and presented herewith for inspection of the above Commissioner.

That said Peckham is now within the Northern District of New York.

All of which acts of the said Peckham were done contrary to the form of the Statutes of the United States of America, in such case made and provided and against the peace of the United States of America and their dignity.

(Signed) MARK J. THOMAS,
U. S. Treas. Ag't.

Subscribed and sworn to before me this 23rd day of August, 1905.
(Signed) CHARLES M. DAVISON,
U. S. Commissioner, Northern Dist. of N. Y.

663 U. S. Dist. Court.

UNITED STATES
vs.
FREDERICK A. PECKHAM.

(Copy.)

Complaint.

G. W. R.,
U. S. A.

Filed Aug. 23, 1905.

664 To the Marshal of the United States for the Northern District of New York, and to his deputies and to any and either of them

Whereas complaint has this day been made on oath before me Charles M. Davison, a Commissioner of the Circuit Court of the United States for the Northern District of New York, charging that

Frederick A. Thomas did on or about the 2nd day of June, 1904, at the City of Washington, D. C., knowingly and wrongfully and unlawfully conspire, combine, confederate and agree by means of a dishonest scheme and arrangement to rob, defraud and steal from the United States of America, in violation of the acts of Congress in such case made and provided.

Now therefore, you are hereby commanded, in the name of the President of the United States of America, to apprehend the said Frederick A. Peckham and bring him bodily before me, one of the Commissioners appointed by the Circuit Court of the United States for the Northern District of New York, at my office in the Village of Saratoga Springs, that he may then and there be dealt with according to law for the said offense.

Given under my hand and seal this 23rd day of August, in the year of our Lord one thousand nine hundred and five, and of our Independence —.

(S'd) C. M. DAVISON,
Commissioner U. S. Circuit Court for the Northern District of New York.

665 In Commissioner's Court of the United States for the Northern District of New York.

UNITED STATES
vs.
FREDERICK A. PECKHAM.

Before Honorable Charles M. Davison, United States Commissioner.

October 2, 1905. 9.12 A. M.

Present: The United States Commissioner; Elmer E. Belden, Deputy United States Marshal; Frederick A. Peckham, defendant, with Nash Rockwood and Winsor P. French as Counsel, Edgar D. Starbuck and Will W. Blackmer, his bondsmen.

By Judge ROCKWOOD: Mr. Commissioner, the defendant in this proceeding produces before you a certified copy of your return showing the proceedings which were had before you on August 23rd, 1905, and August 24th, 1905; which return has been filed by you with the Clerk of the Supreme Court of the District of Columbia on the 31st day of August, 1905, and Mr. Commissioner, the
666 sureties of the defendant, Messrs. Starbuck and Blackmer, in accordance with the provisions of Section 1018 of the Revised Statutes of the United States of America, surrender and deliver to Elmer E. Belden, a Field Deputy of the Marshal of the United States for the Northern District of New York, and in your presence, the body of the defendant, Frederick A. Peckham, and said bondsmen request in pursuance of said Section, that you endorse upon the certified copy of the bond now produced before you, the exonerator of said bail. This delivery and surrender is made in vaca-

tion of the Supreme Court of the District of Columbia and before there has been any default upon the recognizance.

By the COMMISSIONER:

Q. And this is your request?

Messrs. STARBUCK and BLACKMER:

A. Yes.

By the COMMISSIONER: In pursuance of the provisions of 1018 of the Revised Statutes of the United States, and at the request of the bondsmen being present in person before the Commissioner, and the United States Field Marshal, Elmer E. Belden, I hereby accept such surrender and discharge and exonerate the bail upon the bond of said Frederick A. Peckham, heretofore given before me in the sum of $10,000, by Edgar D. Starbuck and Will W. Blackmer.

By Judge ROCKWOOD: Now will your Honor endorse upon
667 the recognizance the formal exonerator of the bail?

By the COMMISSIONER: If you will have it written on I will endorse it on here. (Indicating the paper.) The exonerator and discharge of the bail, having been duly endorsed upon a certified copy of the recognizance produced before the Commissioner, the Commissioner thereupon affixed his signature and seal of office to the same, and thereafter the following proceedings took place:

By Judge ROCKWOOD: Mr. Commissioner, we demand and request that we be now permitted to withdraw the plea of "not guilty" heretofore entered before you, and we do withdraw such plea upon the ground that the same is unauthorized and that your Honor had no jurisdiction to accept such plea; and we request your honor to proceed with the examination of the defendant to ascertain if there is any probable cause to believe him guilty of any *de*fense against the United States of America.

By the COMMISSIONER: The request is denied; and examination having once — had the power in the Commissioner is exhausted, and he has no inherent power in himself to institute a new examination except by order of a superior judge or court.

By Judge ROCKWOOD: We duly except to your Honor's ruling, and such exception is noted on the ruling.

668 By the COMMISSIONER: Yes.

By Judge ROCKWOOD: We produce before you a certified copy of your return in this matter of the proceedings which were had before you on August 23, and 24, 1905, which return was signed by you and filed with the Clerk of the Supreme Court of the District of Columbia on August 31st, 1905, and we demand and request that said return be corrected in the following particulars: The said return reads as follows: "The defendant thereupon plead not guilty:" There is no reservation in your record or return of the right given to the defendant Peckham to withdraw such plea of not guilty at any time, to demur to the indictment or otherwise challenge, or to object to the jurisdiction of the Court or to otherwise proceed as he might be advised. We call your honor's attention to the fact that at the previous hearing, when Mr. Peckham plead not

guilty, your Honor expressly reserved to him, at the request of his counsel, with the consent of the District Attorney of the United States for the Northern District of New York, then present, the right to withdraw said plea of not guilty at any and all times, to demur to the indictment, to challenge and object to the jurisdiction of the Court to proceed against him at any and all times, and that all of his rights were by your Honor expressly reserved. None of said facts appear in the return which is filed in this case. We
669 request that the return be withdrawn by you from the files and amended, or that you file a supplemental or additional return which shall set forth the facts of the reservation of the rights of the defendant which were in fact had before you at the previous hearing.

By the COMMISSIONER: The request is refused and denied. It is unnecessary to preserve or secure the rights of the defendants, that any special mention should be made in the minutes of the Commissioner as to his right to change his plea or to make any additional motions; it is a preliminary examination before the Commissioner. Whatever rights the defendant has on the trial must be made at the trial court.

By Judge ROCKWOOD: We accept that. We ask your Honor to note upon the record here your Honor's understanding of the reservation of the rights of the defendant which were had before you at the last hearing. We ask this for the protection of the defendant and so that the Court to which this matter may come will be duly advised of the facts which occurred before you.

By the COMMISSIONER: It is true that on the examination had the defendant, through Judge Rockwood, his counsel, desired to
670 know whether it was necessary, in order to protect his rights, that a reservation should be made in his plea. The Commissioner then and there informed him that such thing was unnecessary, and the said counsel, relying upon the statement of said Commissioner, the prisoner pleaded "Not guilty" for his client, saying that he reserved the right to demur to said indictment, to object to the jurisdiction of the Court, to withdraw said plea of "Not guilty," to take such further action as he might be advised. Such reservation was concurred in by the District Attorney and such plea was received by me with such tacit reservation.

By Judge ROCKWOOD: We request your Honor to amend your return and file an amended statement to that effect in the following additional particulars.

Your Honor's return shows that an authenticated copy of the indictment in this case was read to the defendant by the United States Attorney in the presence of said Commissioner. We call your Honor's attention to the fact that said indictment was not read to Mr. Peckham, and request that your Honor make a return in that respect.

By the COMMISSIONER: Denied.

671 By Judge ROCKWOOD: May we note an exception?

By the COMMISSIONER: Yes, although such are not the facts.

By Judge ROCKWOOD: We note an exception.

By the COMMISSIONER: The proceedings being closed a commitment is issued to the Marshal of the Northern District of New York to hold the defendant in custody at Ballston jail, Saratoga County, until discharged by due process of law.

By Judge ROCKWOOD: The discharge and exonerator of bail endorsed upon the certified copy of the recognizance and signed by the Commissioner read as follows:

"In Commissioner's Court of the United States of America, Northern District of New York.

"Before Charles M. Davison, United States Commissioner.

"UNITED STATES
"vs.
"FREDERICK A. PECKHAM.

672 "OCTOBER 2, 1905—9.12 A. M.

"I, Charles M. Davison, a Commissioner of the United States in "and for the Northern District of New York, duly appointed, qualified, and acting, do hereby certify and state that on the 2nd day "of October, 1905, at 9.12 A. M., the body of Frederick A. Peckham, the defendant above named, was delivered and surrendered "by his bondsmen, Edgar D. Starbuck and Will W. Blackmer, in "my presence to the custody of Elmer E. Belden, the Field-Deputy "Marshall of the Marshal of the United States for the Northern "District of New York. That I thereupon accepted such surrender "and delivery and I do now hereby in pursuance of the provisions "of Section 1018 of the Revised Statutes of the United States of "America fully and in all respects discharge and exonerate said "Will W. Blackmer and Edgar D. Starbuck, their and each of their "heirs, executors, administrators, and assigns of and from any and "all further liability upon said bond or recognizance heretofore "entered into by them before me on the 24th day of August, 1905, "as sureties for the appearance of Frederick A. Peckham as in said "bond set forth.

673 "This discharge and exonerator of bail is endorsed upon "a certified copy of said recognizance.

"In witness whereof I have hereunto affixed my hand and the "seal of my office this 2nd day of October, 1905, at 9.12 A. M., at "Saratoga Springs, N. Y., and of the independence of America the "One hundred and thirtieth year.

"(Sd.) CHARLES M. DAVISON,
United States Commissioner.

All of the above are the proceedings had before me on the date and time aforesaid.

Witness my hand and seal this second day of October, One thousand nine hundred and five, at Saratoga Springs, N. Y.

[SEAL.] CHARLES M. DAVISON,
U. S. Commissioner.

674 United States District Court, Northern District of New York. United States vs. Frederick A. Peckham. (Copy.) Minutes of Proceedings had before United States Commissioner on October 2, 1905, at Saratoga Springs, N. Y. Rockwood & Salisbury, Attorneys for Defendant, 378 Broadway, Saratoga Springs, N. Y. G. W. R., U. S. J.

675 In the United States District Court, Northern District of New York. United States of America vs. Frederick A. Peckham. Certificate of William S. Doolittle, Clerk of The United States District Court for the Northern District of New York; certified copy of certificate of Hon. George W. Ray, United States Judge; Certified copy of Warrant; Certified copy of minutes of proceeding had before United States Commissioner Davison, on October 2, 1905. Original filed Octo. 31, 1908. 10[30 A. M. W. S. Doolittle, Clerk. Nash Rockwood, Attorney for Frederick A. Peckham, Saratoga Springs, N. Y.

676 (Endorsed:) United States District Court, Northern District of New York. United States vs. Frederick A. Peckham. Copy. Minutes of Proceedings had before United States Commissioner on October 2nd, 1905, at Saratoga Springs, N. Y. (Copy.) G. W. R., U. S. J. Rockwood & Salisbury, Attorneys for Defendant, 378 Broadway, Saratoga Springs, N. Y.

677 UNITED STATES OF AMERICA,
Northern District of New York, County of Saratoga:

Before me, Charles M. Davison, a Commissioner of the District Court of the United States in and for the Northern District of New York, came Mark J. Thomas of Washington, D. C., who being duly sworn on his oath says: that he is the United States Agent. That one Frederick A. Peckham of the City, County and State of New York, on or about the 2nd day of June, 1904, in the District of Columbia, United States of America, did then and there knowingly and unlawfully conspire, combine, confederate and agree with one Moses Haas and Edwin S. Holmes to defraud the said United States in a dishonest manner, through and by means of a dishonest scheme and arrangement, that is to say:

The said Peckham while Associate Statistician in the Department of Agriculture at Washington in the District aforesaid, conspired, combined and confederated and agreed with the persons aforesaid mentioned to rob, defraud and steal from the said United States of America in violation of Section 5440 of the Revised Statutes of the Congress of the United States of America; that on or about the 1st day of April, 1905, the said Peckham was duly indicted by the Grand Jury of the United States in and for the District of Columbia, for the offense above charged; that the allegations of this information are made upon the information and belief of deponent.

678 That the sources of deponent's knowledge and information is derived from information received by him as said officer of the United States and also from a certified copy of the indictment of

the Grand Jury aforesaid, now in deponent's possession and presented herewith for inspection of the above Commissioner.

That said Peckham is now within the Northern District of New York.

All of which acts of the said Peckham were done contrary to the form of the Statutes of the United States of America, in such case made and provided and against the peace of the United States of America and their dignity.

(Signed) MARK J. THOMAS,
U. S. Treas. Ag't.

Subscribed and sworn to before me this 23rd day of August, 1905.

(Signed) CHARLES M. DAVISON,
U. S. Commissioner, Northern Dist. of N. Y.

679 (Endorsed:) U. S. Dist. Court. United States vs. Frederick A. Peckham. Copy. Complaint. (Copy.) G. W. R., U. S. J. Filed Aug. 23, 1905.

680 To the Marshal of the United States for the Northern District of New York, and to his Deputies and to any and either of them:

Whereas, Complaint has this day been made on oath, before me, Charles M. Davison, a Commissioner of the Circuit Court of the United States, for the Northern District of New York, charging that Frederick A. Peckham did on or about the 2nd day of June, 1904, at the City of Washington, D. C., knowingly and wrongfully and unlawfully conspire, combine, confederate and agree by means of a dishonest scheme and arrangement to rob, defraud and steal from the United States of America, in violation of the Acts of Congress in such case made and provided.

Now therefore, you are hereby commanded, in the name of the President of the United States of America, to apprehend the said Frederick A. Peckham and bring him bodily before me, one of the Commissioners appointed by the Circuit Court of the United States for the Northern District of New York, at my office in the Village of Saratoga Springs, that he may then and there be dealt with according to law for the said offense.

Given under my hand and seal this 23rd day of August, in the year of our Lord one thousand nine hundred and five and of our independence.

(Sd.) C. M. DAVISON,
Commissioner U. S. Circuit Court for the Northern District of New York

681 In the Commissioner's Court of the United States for the Northern District of New York.

UNITED STATES
vs.
FREDERICK A. PECKHAM.

Before Honorable Charles M. Davison, United States Commissioner.

OCTOBER 2, 1905.—9.12 A. M.

Present: The United States Commissioner; Elmer E. Belden, Deputy United States Marshal; Frederick A. Peckham, defendant, with Nash Rockwood and Winsor P. French as counsel; Edgar D Starbuck and Will W. Blackmer, his Bondsmen.

By Judge ROCKWOOD:

Mr. Commissioner, the defendant in this proceeding produces before you a certified copy of your return showing the proceedings which were had before you on August 23, 1905, and August 24, 1905; which return has been filed by you with the Clerk of the Supreme Court of the District of Columbia on the 31st day of August, 1905, and Mr. Commissioner the sureties of the defendant, Messrs. Starbuck and Blackmer, in accordance with the pro-
682 visions of Section 1018 of the Revised Statutes of the United States of America, surrender and deliver to Elmer E. Belden, a Field-Deputy of the Marshal of the United States for the Northern District of New York, and in your presence, the body of the defendant, Frederick A. Peckham; and said bondsmen request, in pursuance of said section, that you endorse upon the certified copy of the bond now produced before you, the exonerator of said bail. This delivery and surrender is made in vacation of the Supreme Court of the District of Columbia and before there has been any default upon the recognizance.

By the COMMISSIONER:

Q. And this is your request?

Messrs. STARBUCK & BLACKMER:

A. Yes.

By the COMMISSIONER: In pursuance of the provisions of 1018 of the Revised Statutes of the United States, and at the request of the bondsmen, being present in person before the Commissioner, and the United States Field Marshal, Elmer E. Belden, I hereby accept such surrender and discharge and exonerate the bail upon the bond of said Frederick A. Peckham heretofore given before me in the sum of $10,000 by Edgar D Starbuck and Will W. Blackmer.

By Judge ROCKWOOD: Now will your Honor endorse upon
683 the recognizance the formal exonerator of the bail?

By the COMMISSIONER: If you will have it written on I will endorse it on here. (Indicating the paper.)

The exoneration and discharge of the bail having been duly endorsed upon a certified copy of the recognizance produced before the Commissioner, the Commissioner thereupon affixed his signature and seal of office to the same, and thereafter the following proceedings took place:

By Judge Rockwood: Mr. Commissioner, we demand and request that we be now permitted to withdraw the plea of "Not Guilty," heretofore entered before you, and we do withdraw such plea upon the ground that the same was unauthorized and that your Honor had no jurisdiction to accept such plea; and we request your Honor to proceed with the examination of the defendant to ascertain if there is any probable cause to believe him guilty of any *de*fense against the United States of America.

By the Commissioner: The request is denied; an examination having been once had the power in the Commissioner is exhausted and he has no inherent power in himself to institute a new examination except by order of a superior Judge or Court.

684 By Judge Rockwood: We duly except to your Honor's ruling and such exception is noted on the ruling.

By the Commissioner: Yes.

By Judge Rockwood: We produce before you a certified copy of your return in this matter of the proceedings which were had before you on August 23 and 24, 1905, which return was signed by you and filed with the Clerk of the Supreme Court of the District of Columbia on August 31st, 1905, and we demand and request that said return be corrected in the following particulars: The said return reads as follows: "The defendant thereupon plead not guilty." There is no reservation in your record or return of the right given to the defendant Peckham to withdraw such plea of not guilty at any time, to demur to the indictment or otherwise challenge, or to object to the jurisdiction of the Court, or to otherwise proceed as he might be advised. We call your Honor's attention to the fact that at the previous hearing, when Mr. Peckham plead not guilty, your Honor expressly reserved to him, at the request of his counsel, with the consent of the District Attorney of the United States for the Northern District of New York, then present, the right to withdraw said plea of not guilty at any and all times, to demur to the indictment, to challenge and object to the jurisdiction of the Court to pro-
685 ceed against him at any and all times, and that all of his rights were by your Honor expressly reserved. None of said facts appear in the return which is filed in this case. We request that the return be withdrawn by you from the files and amended, or that you file a supplemental or additional return which shall set forth the facts of the reservation of the rights of the defendant which were in fact had before you at the previous hearing.

By the Commissioner: The request is refused and denied. It is unnecessary, to preserve or secure the rights of the defendant, that any special mention should be made in the minutes of the Commissioner as to his right to change his plea or to make any additional motions; it is a preliminary examination before the Commissioner.

Whatever rights the defendant has on the trial must be at the trial court.

By Judge Rockwood: We except to that. We ask your Honor to note upon the record here your Honor's understanding of the reservation of the rights of the defendant which were had before you at the last hearing. We ask this for the protection of the defendant and so that the Court to which this matter may come will be duly advised of the facts which occurred before you.

By the Commissioner: It is true that on the examination
686 had the defendant, through Judge Rockwood, his counsel, desired to know whether it was necessary, in order to protect his rights, that a reservation should be made in his plea. The Commissioner then and there informed him that such thing was necessary, and the said counsel, relying upon the statement of said Commissioner, thereupon pleaded "Not Guilty" for his client, saying that he reserved the right to demur to said indictment, to object to the jurisdiction of the Court, to withdraw said plea of "Not Guilty," to take such further action as he might be advised. Such reservation was concurred in by the District Attorney and such plea was received by me with such tacit reservation.

By Judge Rockwood: We request your Honor to amend your return and file an amended statement to that effect in the following additional particulars. Your Honor's return shows that an authenticated copy of the indictment in this case was read to the defendant by the United States Attorney in the presence of said Commissioner. We call your Honor's attention to the fact that said indictment was not read to Mr. Peckham, and request that your Honor make a return in that respect.

By the Commissioner: Denied.

687 By Judge Rockwood: May we note an exception?

By the Commissioner: Yes, although such are not the facts.

By Judge Rockwood: We note an exception.

By the Commissioner: The proceedings being closed a commitment is issued to the Marshal of the Northern District of New York to hold the defendant in custody at Ballston jail, Saratoga County, until discharged by due process of law.

By Judge Rockwood: The discharge and exonerator of bail endorsed upon the certified copy of the recognizance and signed by the Commissioner read as follows:

"In Commissioner's Court of the United States of America, Northern District of New York.

"Before Charles M. Davison, United States Commissioner.

"United States

"vs.

"Frederick A. Peckham.

"October 2, 1905—9.12 A. M.

688 "I, Charles M. Davison, a Commissioner of the United "States in and for the Northern District of New York, duly

" appointed, qualified and acting, do hereby certify and state that " on the 2nd day of October, 1905, at 9.12 A. M., the body of " Frederick A. Peckham, the defendant above named, was delivered " and surrendered by his bondsmen, Edgar D. Starbuck and Will W. " Blackmer, in my presence to the custody of Elmer E. Belden, the " Field-Deputy Marshal of the Marshal of the United States for the " Northern District of New York. That I thereupon accepted such " surrender and delivery and I do now hereby in pursuance of the " provisions of Section 1018 of the Revised Statutes of the United " States of America fully and in all respects discharge and exonerate " said Will W. Blackmer and Edgar D. Starbuck, their and each of " their heirs, executors, administrators and assigns of and from any " and all further liability upon said bond or recognizance heretofore " entered into by them before me on the 24th day of August, 1905, " as sureties for the appearance of Frederick A. Peckham as in said " bond set forth.

" This discharge and exonerator of bail is endorsed upon a cer- " tified copy of said recognizance.

689 " In witness whereof I have hereunto affixed my hand and " the seal of my office this 2nd day of October, 1905, at 9.12 " A. M., at Saratoga Springs, N. Y., and of the independence of " — America the One hundred and thirtieth year.

"(Sd.) CHARLES M. DAVISON,
"*United States Commissioner.*

All of the above are the proceedings had before me on the date and time aforesaid.

Witness my hand and seal this second day of October, One thousand nine hundred and five, at Saratoga Springs, N. Y.

(Sd.) CHARLES M. DAVISON,
[SEAL.] *U. S. Commissioner.*

690 (Endorsement:) No. 26086. United States vs. Edwin S. Holmes, junior, Frederick A. Peckham, and Moses Haas. Conspiracy to Defraud the United States. Witnesses: Andrew Parker, Sam'l Baulsir, Wm. L. Lanning, Nathaniel Murray, Louis C. Van Riper, Herbert H. Smith, Richard A. Springs, Victor Armstead, Russell R. Coats, Walter Mayer. A true bill. E. J. Walsh, Foreman. Filed in open court May 29, 1908. J. R. Young, Clerk.

691 Before John A. Shields, Esq., U. S. Commissioner, Southern District of New York.

UNITED STATES
v.
EDWIN S. HOLMES, JR., MOSES HAAS, and FREDERICK A. PECKHAM.

UNITED STATES
v.
MOSES HAAS and FREDERICK A. PECKHAM.

R. S., Sec. 5440.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Goldthwaite H. Dorr, being first duly sworn, deposes and says:

That he is an Assistant United States Attorney for the Southern District of New York;

That on the 29th day of May, A. D. 1908, there were returned into the Supreme Court of the District of Columbia by the grand jury of that Court, two certain indictments against Moses Haas and Frederick A. Peckham, charging them with violating Section 5440 of the Revised Statutes of the United States as amended; that one of said indictments was numbered 26086 and a duly certified copy
692 thereof is hereto annexed, marked Exhibit A and made part hereof; that the other of said indictments was numbered 26087 and a duly certified copy thereof is hereto annexed, marked Exhibit B and made part hereof.

First Count.

On information and belief derived from said Exhibit A, affiant says that heretofore, to wit, on May 31, 1905, and at the District of Columbia and under the circumstances and conditions set forth and averred in said Exhibit A, the said Moses Haas and Frederick A. Peckham unlawfully did conspire with one Edwin S. Holmes, Jr., and one Lewis C. Van Riper to defraud the United States of and concerning its governmental function in the matter of issuing and publishing the cotton-crop report to be issued and published by the Department of Agriculture, Bureau of Statistics, in the next succeeding month of June, and of its right to administer an intelligent and honest service in that connection in the interests of the people of the United States, to be accomplished by the means and methods and under the circumstances and conditions in said Exhibit A set forth and described; and that in pursuance of said conspiracy and to effect its object, said Moses Haas at the places and at the times in said Exhibit A set forth, did do and perform the several acts averred in said Exhibit A to have been done in pursuance of said conspiracy.

693 *Second Count.*

On information and belief derived from said Exhibit B, affiant further says that heretofore, to wit, on May 31, 1905, and at the District of Columbia and under the circumstances and conditions set forth in said Exhibit B, the said Haas and the said Peckham unlawfully did conspire with said Lewis C. Van Riper to commit an offense against the United States, that is to say: the offense of promising, offering and giving to an officer of the United States and a person acting for and on behalf of the United States in an official function under and by virtue of a certain department and office of the Government thereof, that is to say, to the said Edwin S. Holmes, Associate Statistician of the said Bureau of Statistics, a sum of money, the amount of which is to affiant unknown, to induce the said Holmes to do certain acts in violation of his lawful duty, that is to say, to induce the said Holmes unlawfully to do and perform the several acts as averred and set forth in said Exhibit B; and that in pursuance of said last mentioned conspiracy and to effect its object, the said Haas at the times and at the places in said Exhibit B set forth did do the several acts averred and alleged in said Exhibit B to have been done in pursuance of said last mentioned conspiracy; against the peace of the United States and their dignity, and contrary to the form of the statute of the same in such case made and provided.

Affiant is informed and believes that the said Moses Haas
694 and the said Frederick A. Peckham are now within the Southern District of New York.

GOLDTHWAITE H. DORR.

Subscribed and sworn to before me this 24th day of June A. D. 1908.

JOHN A. SHIELDS,
U. S. Commissioner.

695 EXHIBIT A.

Authentication.

Supreme Court of the District of Columbia.

I, John R. Young, Clerk of the said Court, do hereby certify that the following copy of indictment, annexed to this certificate, is a true copy of the original on file and of record in said office, and that said original indictment is pending in said Court.

Witness my hand and the seal of said Court, this 2nd day of June, 1908.

[Seal Supreme Court of the District of Columbia.]

J. R. YOUNG, *Clerk.*
By S. McC HAWKEN,
Ass't Clerk.

I, Harry M. Clabaugh, Chief Justice of said Court, do certify the foregoing attestation by John R. Young, Clerk of the said Court, to be in due form.

Witness my hand and seal this 2nd day of June, 1908.

HARRY M. CLABAUGH, [SEAL.]
Chief Justice.

I, John R. Young, Clerk of said Court, hereby certify that the Honorable Harry M. Clabaugh, whose genuine signature is subscribed to the foregoing certificate, was, at the time of signing and attesting the same, Chief Justice of said Court, duly commissioned and qualified.

Witness my hand and the seal of said Court, this 2d day of June, 1908.

[Seal Supreme Court of the District of Columbia.]

J. R. YOUNG, *Clerk.*
By S. McC. HAWKEN,
Ass't Clerk.

696 Filed in Open Court May 29, 1908. J. R. Young, Clerk.

In the Supreme Court of the District of Columbia, Holding a Criminal Term, April Term, A. D. 1908.

DISTRICT OF COLUMBIA, *ss:*

The grand jurors of the United States of America, in and for the District of Columbia aforesaid, upon their oath, do present:

That before and during the three years last past the United States, through the Department of Agriculture and a certain bureau of that department, to wit, the Bureau of Statistics, has exercised the governmental function of acquiring and diffusing among the people of the United States useful information on subjects connected with agriculture, including the subject of cotton; that in acquiring such information pertaining to cotton the United States, through the said department and bureau, has made use of divers agencies, to wit, among others correspondence with cotton planters and dealers in and ginners of cotton, through employees and agents of the said department and bureau located in the several States where cotton is grown, and through special investigations in the field by employees and agents of the said department and bureau; and that in diffusing the said information pertaining to cotton the United States has issued, on or near the third day of each of the months of June, July, August, September October and December in each year crop reports embracing statements, based upon the information so acquired, of the conditions of the cotton crop, by States, in the United

697 States, with such explanations, comparisons, and information as might be useful for illustrating that matter,—which said cotton-crop reports have been by law required to be submitted to and officially approved by the Secretary of Agriculture before so being issued or published; and that under the practice, custom and regula-

tion of the said department established and sanctioned by the said Secretary of Agriculture, no officer or employee thereof to whom such information might come by reason of his office or employment has been permitted to issue, publish or divulge to unauthorized persons, and all such officers and employees have been prohibited from issuing, publishing or divulging to unauthorized persons, any such information so acquired as aforesaid, or any such cotton crop report, or any information indicating the probable contents or character of the same, in advance of its official issuance and publication, or without its first being submitted to and officially approved by the said Secretary.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that Moses Haas, Edwin S. Holmes, junior, and Frederick A. Peckham, each late of the District of Columbia, on the thirty-first day of May, in the year of our Lord one thousand nine hundred and five, at and within the said District of Columbia unlawfully did knowingly conspire, combine, confederate and agree together, and with one Lewis C. Van Riper, who is not made a defendant herein, to defraud the United States of and concerning its governmental function in the matter of issuing and publishing the cotton-crop report to be issued and published by the said
698 department and bureau in the then next succeeding month of June, and of its right to administer an intelligent and honest service in that behalf in the interests of the people of the United States, to be accomplished by the means and methods and under the circumstances and conditions now here set forth and described; that is to say:

The said Edwin S. Holmes, junior, before and on the day last aforesaid, was an officer and employee of the said department and bureau, to wit, associate statistician thereof, and a portion of the information upon which the said cotton-crop report was to be based, and which has been acquired by the said department and bureau in the manner aforesaid, and indicated the probable contents and character of the said report, had come and was known to the said Edwin S. Holmes, junior, in his capacity as such officer and employee; and thereafter, and before the time of the official issuance and publication of the said report, other like information would come to and be known to the said Edwin S. Holmes, junior, in his said capacity.

The said Frederick A. Peckham, Moses Haas and Lewis C. Van Riper, who then and there were neither officers nor employees either of the said department or of the said bureau, and who then and there were persons not in any manner authorized to have or know the information last aforesaid, or be informed as to the probable contents or character of the said crop report in advance of its said official issuance and publication, or without such report first being submitted to and officially approved by the said Secretary, and who well knew all the premises in this indictment above set forth, were there-
699 after, and in advance of the said official issuance and publication of the said cotton crop report, to obtain and receive from the said Edwin S. Holmes, junior, and the said Edwin S.

Holmes, junior, also then well knowing the said premises, was to give and divulge to them the said Frederick A. Peckham, Moses Haas and Lewis C. Van Riper information which as aforesaid had and would come and be known to him the said Edwin S. Holmes, junior, in his said capacity as an officer and employee of the said department and bureau, and this without the said cotton-crop report being first submitted to and officially approved by the said Secretary of Agriculture; it being the design and intention of the said Frederick A. Peckham, Moses Haas, Edwin S. Holmes, junior, and Lewis C. Van Riper in so doing to make use of the said information, before the lawful issuance and publication of the said report, for their pecuniary benefit, in speculating in cotton, in view of the probable effect upon the market price of that commodity which the subsequent lawful issuance and publication of the said cotton crop report would have, and in other ways to the said grand jurors unknown.

Overt Acts.

1. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said Moses Haas, at the District of Columbia, on the said thirty-first day of May, in the year of our Lord nineteen hundred and five, unlawfully did promise and offer to give to the said Edwin S. Holmes, junior, a certain share of whatever moneys, they, the
700 said Moses Haas and Frederick A. Peckham and the said Lewis C. Van Riper, or either of them should acquire through speculation in cotton based upon information to be furnished by the said Edwin S. Holmes, junior, to them, which information has been or should be acquired by the said Edwin S. Holmes, junior, in his official capacity as to the probable contents of the cotton-crop report to be issued in the month of June then next ensuing.

2. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that further in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said Moses Haas unlawfully did meet and confer with the said Lewis C. Van Riper at the City of New York, in the Southern District of New York, on the said thirty-first day of May, in the year of our Lord nineteen hundred and five.

3. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that further in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said Moses Haas, afterwards, to wit, on the first day of June, in the year of our Lord nineteen hundred and five, unlawfully did journey from the said City of New York, in said Southern District of New York to the said City of Washington, said District of Columbia.

4. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that further in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to
701 effect the object of the same, the said Moses Haas, afterwards, to wit, on the said first day of June, in the year nineteen

hundred and five, unlawfully did obtain from the said Edwin S. Holmes, junior, at said District of Columbia, certain information which was to be contained in said cotton-crop report to be issued in said month of June, nineteen hundred and five, and which had been acquired by the said Edwin S. Holmes, junior, in the performance of his duties as such associate statistician.

5. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that further in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said Moses Haas at the said City and Southern District of New York on the said second day of June, in the year nineteen hundred and five unlawfully did communicate the said information so obtained as in manner aforesaid by him from the said Edwin S. Holmes, junior, to the said Louis C. Van Riper.

And so the grand jurors aforesaid, upon their oath aforesaid, do say that the said Moses Haas and the said Edwin S. Holmes, junior, and the said Frederick A. Peckham at the time and place and in manner and form aforesaid, unlawfully did conspire together, and with others, to defraud the United States; and did each do acts to effect the object of the said conspiracy against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

DANIEL W. BAKER,
Attorney of the United States in and for the District of Columbia.

702 (Endorsement:) No. 26087. United States vs. Moses Haas and Frederick A. Peckham. Witnesses: Andrew Parker, Sam'l. Badger, Wm. L. Lanning, Nathaniel Murray, Louis C. Van Riper, Herbert H. Smith, Richd. A. Springs, Victor Arnstead, Russell R. Coats, Walter Mayer. A true bill. E. J. Waldo, Foreman. Filed in open court May 29, 1908. J. R. Young, Clerk.

703 EXHIBIT B

Authentication.

Supreme Court of the District of Columbia.

I, John R. Young, Clerk of the said Court, do hereby certify that the *following* copy of indictment annexed to this certification, is a true copy of the original on file and of record in said office, and that said original indictment is pending in said Court.

Witness my hand and the seal of said Court, this 1st day of June, 1908.

[Seal Supreme Court of the District of Columbia.]

J. R. YOUNG, *Clerk*,
By S. McC. HAWKEN,
Asst Clerk.

I, Harry M. Clabaugh, Chief Justice of said Court, do certify the foregoing attestation by John R. Young, Clerk of the said Court, to be in due form.

Witness my hand and seal this 1st day of June, 1908.

HARRY M. CLABAUGH. [SEAL.]
Chief Justice.

I, John R. Young, Clerk of said Court, hereby certify that the Honorable Harry M. Clabaugh, whose genuine signature is subscribed to the foregoing certificate, was, at the time of signing and attesting the same, Chief Justice of said Court, duly commissioned and qualified.

704 Witness my hand and the seal of said Court, this 1st day of June, 1908.

[Seal Supreme Court of the District of Columbia.]

J. R. YOUNG, *Clerk.*
By S. McC. HAWKEN,
Ass't Clerk.

705 Filed in Open Court May 29, 1908. J. R. Young, Clerk.

In the Supreme Court of the District of Columbia, Holding a Criminal Term, April Term, A. D. 1908.

DISTRICT OF COLUMBIA, *ss:*

The grand jurors of the United States of America, in and for the District of Columbia aforesaid, upon their oath, do present

That in the administrative arrangement of the business of the Department of Agriculture of the said United States, on and before the thirty-first day of May, in the year nineteen hundred and five, there was, and from thence hitherto there has been, a bureau designated and known as the Bureau of Statistics; and that during the time and times aforesaid the said bureau was under the management of an officer and employee of the said United States and of the said Department of Agriculture designated and known as statistician and as chief of the Bureau of Statistics; and that during the time and times aforesaid there were in the said bureau other officers and employees of the said United States and of the said Department of Agriculture, one of whom was designated and known as associate statistician and another of whom was designated and known as assistant statistician and as assistant chief of the Bureau of Statistics; and that during the time and times aforesaid whenever the said statistician was absent from his said office, the said bureau was under the management of the said associate statistician, who acted in the place and stead of said statistician as chief of said bureau.

706 And that during the time and times aforesaid the said statistician with the aid and assistance of the said associate statistician and of the other officers and employees of the said United States employed in said bureau, and in the absence of the

said statistician, the said associate statistician with the aid and assistance of the other officers and employees aforesaid of said bureau, was charged with the duty of preparing during certain months in each year certain reports upon the conditions of certain of the crops grown and raised in the United States, which reports became known as and were called crop reports, and that each of said crop reports was by law required to embrace statements of the conditions of the crops therein mentioned by States of the said United States, with such explanations, comparison and information as might be useful for illustrating the matter contained in said reports, and that each of such reports was required by law to be submitted to and officially approved by the Secretary of Agriculture before being issued or published.

That each of said reports was prepared by the said statistician or the said associate statistician in the manner aforesaid, from certain information collected by the said bureau from divers sources approved by the said bureau; amongst others being certain correspondents of the said Bureau of Statistics residing in those parts of the United States where were grown the particular crops upon which they furnished information, and who were persons having special knowledge upon the subject, and certain employees of the said bureau known as Statistical Agents, and certain other expert employees of the said bureau, whose duty it was to travel throughout the United
707 States and ascertain the conditions of the said crops.

And that during the time and times aforesaid whenever the said statistician or the said associate statistician had as aforesaid prepared any of said reports, he, the said statistician, or the said associate statistician, as the case might be, in accordance with the requirement of law last aforesaid submitted the said report so prepared to the Secretary of Agriculture for the latter's official approval; and that whenever any of said reports was so submitted by said Secretary of Agriculture for his official approval, he, the said Secretary of Agriculture, in the usual course of business in his said Department, and relying upon the proper performance of his duty in the preparation of said report by the said statistician or by the said associate statistician, as the case might be, officially approved the same; and that after such official approval by the said Secretary of Agriculture thereof, and not until such approval was given, each of said reports was issued and published by the said Department of Agriculture.

And that during the time and times aforesaid, the said crop reports were prepared, approved, and issued and published for the purpose of diffusing the information therein contained among the people of the United States, and that said crop reports were prepared at great expense to the said United States and were to be fair, impartial, correct and accurate; and the said crop reports and each of them upon their issuance and publication after being submitted to and officially approved by the Secretary of Agriculture as aforesaid, did affect to a greater or less extent the market prices of the several crops
mentioned therein.

708 That during the time and times aforesaid a custom and practice prevailed in the said Department of Agriculture, established and maintained by the said Secretary, under which the

giving out to the public of any information collected by the said Bureau of Statistics or its said officers of its said employees, to be used in the preparation of or to be contained in any of said crop reports, was prohibited, and the keeping of such information secret was required, except such information as was contained in said crop reports when and after the same had been officially issued and published. And that during the time and times aforesaid it was the duty of the said statistician and of the said associate statistician and said other officials and employees aforesaid of the said Bureau of Statistics to prepare a true and accurate report upon each of the said crops, from the information as to said crops obtained as aforesaid, and without regard to the influence which any such report might have upon the market price of the crop therein mentioned.

And that during the time and times aforesaid the said statistician and the said associate statistician and the other officers and employees aforesaid of the said Bureau of Statistics were charged with the duty of honestly and carefully guarding and keeping secret and of not divulging to any person not employed in or connected with said Bureau of Statistics any information acquired by him or them in the course of preparing and assisting in preparing the said crop reports and in collecting statistics and compiling statistical matter for use in the preparation of said crop reports, or any of the
709 matters and things and other information which might be contained in any of said crop reports, until said crop reports had been prepared, officially approved, and issued and published as aforesaid, and thereafter said duty of so maintaining secrecy as aforesaid continued save and except as to the matters and things so officially made public in said reports.

And that among the said crop reports so prepared by the said statistician with the aid and assistance of said associate statistician and said other officers and employees of the said Bureau of Statistics, and, in the absence of said statistician, so prepared by the said associate statistician with the aid and assistance of said other officers and employees of the said Bureau of Statistics as aforesaid, and so submitted to and officially approved by the said Secretary of Agriculture as aforesaid, was a report upon the cotton crop of the United States, which became known as and was called the cotton-crop report, and which said cotton-crop report during the time and times aforesaid was issued and published on or about the third day of each of the months of June, July, August, September, October and December in each year.

That on the sixteenth day of November, in the year Nineteen hundred and three, and thence continuously until the ninth day of June, in the year of nineteen hundred and five, one Edwin S. Holmes, junior, held and occupied the office of, and was, such associate statistician in the said Bureau of Statistics in the Department of Agriculture, and as such was an officer of the United States and
710 a person acting for and on behalf of the United States in an official function under and by authority of the said Department and Bureau, and as such associate statistician the said Edwin S. Holmes, junior, was during the period last aforesaid charged with the duty of aiding and assisting the said statistician in the prepara-

tion of said crop reports, including said cotton-crop report, and, in the absence of the said statistician from his office, the said Edwin S. Holmes, junior, as such associate statistician, was during the period last aforesaid charged with the duty of preparing with the aid and assistance of said other officers and employees of said Bureau as aforesaid, all of the said crop reports, including the said cotton-crop reports as aforesaid, and that during the period last aforesaid, in the performance of his duties as said associate statistician in assisting the said statistician in the preparation of said crop reports, including said cotton-crop reports, and, in the absence of the said statistician, in the performance of his duties in preparing said crop reports, including the said cotton-crop reports, he, the said Edwin S. Holmes, junior, did, before the official approval and issuance and publication of each of said crop reports, including the said cotton-crop reports, acquire and have knowledge of the statistics and statistical matter from which said crop reports, including said cotton-crop reports were prepared, and of the matters and things and other information which were to be contained in each of said crop reports, including said cotton-crop reports.

And that during the period last aforesaid it was the duty of said Edwin S. Holmes, junior, as such associate statistician, when-
711 ever he prepared or assisted in preparing any of said reports, to prepare and assist in preparing a true and accurate report, from the information as to said crops obtained as aforesaid, and without regard to the effect which such reports might have upon the market price of the crops therein mentioned, and honestly and carefully to guard and keep secret and not to divulge to any person not employed in or connected with said Bureau of Statistics any of the said statistics and statistical matter and information from which said crop reports, including said cotton crop reports, were to be prepared, and of the matters and things and other information which were to be contained in any of said crop reports, including said cotton crop reports, knowledge of which was so, as aforesaid, acquired by him, the said Edwin S. Holmes, junior, as such associate statistician, until the said reports had been prepared, officially approved, and issued and published as aforesaid, and it was the duty of the said Edwin S. Holmes, junior, as such associate statistician, to thereafter honestly and carefully guard and keep secret and not divulge to any person not employed in or connected with said Bureau of Statistics any of the statistics and statistical matter and matters and things and other information last aforesaid, knowledge of which was so, as aforesaid, acquired by him, except such matters and things and other information as were included in and officially made public in said reports.

All and singular of which the premises and several premises aforesaid, in so far as they were existent, were known to a certain Frederick A. Peckham and to a certain Moses Haas, at the time of the commission by them of the offense hereinafter set forth, and to a certain Lewis C. Van Riper.

712 That on the thirty-first day of May, in the year nineteen hundred and five, at the District of Columbia aforesaid, said

Moses Haas and said Frederick A. Peckham unlawfully did conspire, combine, confederate and agree together with said Lewis C. Van Riper, who is not made a defendant herein, to commit an offense against the United States; that is to say, the offense of promising, offering and giving to an officer of the United States, and a person acting for and on behalf of the United States in an official function under and by virtue of a certain department and office of the government thereof; that is to say, to the said Edwin S. Holmes, junior, associate statistician of the said Bureau of Statistics as aforesaid, a sum of money, the amount of which is to the grand jurors aforesaid unknown, to induce him, the said Edwin S. Holmes, junior, to do certain acts in violation of his lawful duty, that is to say, to induce him, the said Edwin S. Holmes, junior, unlawfully and in violation of the said duty of him, the said Edwin S. Holmes, junior, as such associate statistician honestly and carefully to keep secret all statistics and statistical matter and information, knowledge of which was acquired by him as aforesaid as such associate statistician, and in advance of the official issue and publication of the said cotton crop report, which was to be issued, as hereinbefore set forth, in the month of June next ensuing, and in advance of the time when the matter and information contained in such cotton crop report could lawfully be made public, to furnish, in so far as in him the power lay, to the said Moses Haas and the said Frederick A. Peckham and the said Lewis C. Van Riper, the statistics, matter and information which were to be contained in said report, knowledge of which was, as aforesaid, acquired by said Edwin S. Holmes, junior, in
713 the performance of his duty as such associate statistician.

Overt Acts.

1. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said Moses Haas, at the City of Washington in the District of Columbia, on the said thirty-first day of May, in the year nineteen hundred and five, unlawfully did promise and offer to give to the said Edwin S. Holmes, junior, a certain share, to wit, a sum equal to one-fourth, of whatever moneys they, the said Moses Haas and Frederick A. Peckham and the said Lewis C. Van Riper or either of them should acquire through speculations in cotton based upon information to be furnished by the said Edwin S. Holmes, junior, to them, which information was to be contained in the cotton crop report to be issued in the month of June then next ensuing.

2. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that further in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said Moses Haas unlawfully did meet and confer with the said Lewis C. Van Riper at the city of New York, in said Southern District of New York, on the said thirty-first day of May, in the year nineteen hundred and five.

3. And the grand jurors aforesaid, upon their oath aforesaid, do

further present, that further in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said Moses Haas afterwards to
714 wit, on the first day of June, in the year nineteen hundred and five unlawfully did journey from the said city of New York, in the said Southern District of New York, to the said city of Washington, in said District of Columbia.

4. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that further in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said Moses Haas afterwards, to wit, on the said first day of June, in the year nineteen hundred and five, unlawfully did obtain from the said Edwin S. Holmes, junior, at the said city of Washington, in said District of Columbia, certain information which was to be contained in said cotton crop report to be issued in said month of June, nineteen hundred and five, and which had been acquired by the said Edwin S. Holmes, junior, in the performance of his duties as such associate statistician.

5. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that further in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said Moses Haas, at the said city and Southern District of New York, on the said second day of June, in the year nineteen hundred and five, unlawfully did communicate the said information so obtained as last aforesaid by him from the said Edwin S. Holmes, junior, to the said Lewis C. Van Riper.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said Moses Haas and the said Frederick A. Peckham, at the time and place and in the manner and form aforesaid,
715 unlawfully did conspire together, and with others, to commit an offense against the United States, and did each do acts to effect the object of the said conspiracy; against the peace and dignity of the United States, and contrary to the form of the statute of the same in such case made and provided.

DANIEL W. BAKER,
Attorney of the United States in and for the District of Columbia.

716 UNITED STATES OF AMERICA,
Southern District of New York, ss.

Be it remembered, that on this 1st day of June, in the year of our Lord, One thousand nine hundred and eight, before me John A. Shields, one of the Commissioners duly appointed by the District Court of the United States of America, for the Southern District of New York, in the Southern Circuit, to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States pursuant to the provisions of the Acts of Congress in that behalf, personally came Frederick A. Peckham and Martin Engel surety and severally acknowledged themselves to owe to the United States, that is to say, the said Frederick H. Peckham the sum of Five thousand

dollars, the said Martin Engel to the sum of Five thousand dollars, separately to be levied and made of their respective goods and chattels, lands and tenements, to the use of the said United States, if default shall be made in the condition following, to-wit:

Whereas, at a Stated Term of the Circuit Court of the United States for the Southern District of New York, held on the 29th of May, in the year of our Lord, One thousand nine hundred
717 and eight the Grand Inquest of the United States within and for the district aforesaid, found a true bill of indictment against the said Frederick A. Peckham, for having on the 31st day of May, 1905, at the Southern District of New York, unlawfully *did* conspire together and with others, to commit an offence against the United States, and did each do acts to effect the object of the said conspiracy; against the peace and dignity of the United States, and contrary to the form of the statute of the United States in such case made and provided. As by reference to the indictment on file will more fully and at large appear.

And whereas, the said Frederick A. Peckham has been brought before the said Circuit Court, to answer the indictment aforesaid.

And whereas, the said Circuit Court did thereupon order the said Frederick A. Peckham to find sufficient bail in the sum of Five thousand dollars for his appearance at the Circuit Court of the United States of America for the Southern District of New York, to be holden at the United States Court Building, in the City of New York, on the 19th of June, in the year One thousand nine hundred and eight, to answer the indictment aforesaid; and that in default of finding such bill the said Frederick A. Peckham should stand committed for trial.

718 Now therefore, the condition of this recognizance is such, that if the said Frederick A. Peckham shall personally appear at the Circuit Court of the United States of America, for the Southern District of New York, to be holden at the United States Court Building, in the City of New York, on the 19th of June, in the year of our Lord One thousand nine hundred and eight, at ten thirty o'clock in the forenoon of that day, and from day to day and from term to term thereafter as ordered by said Court, and then and there answer all such matters and things as shall be objected against him, and abide the order of the Court, and not depart the said Court without leave, then this recognizance to be void, otherwise to remain in full force and virtue.

FREDERICK A. PECKHAM.
MARTIN ENGEL.

Acknowledged before me the day and year first above written.

JOHN A. SHIELDS,
U. S. Com.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Martin Engel of No. 29 East Third Street in the City of New York, being duly sworn, deposes and says, that he is worth the sum of

Ten thousand dollars, over and above all his just debts and liabilities.

MARTIN ENGEL.

719 Sworn to this 1st day of June, A. D. 1908, before me.

JOHN A. SHIELDS,
U. S. Com.

(Endorsed:) U. S. Circuit Court. The United States of America vs. Fred'k A. Peckham. Recognizance to appear and answer after indictment. Returnable the 19th of June, 1908. Henry L. Stimson, U. S. Attorney. Filed the 1st day of June, 1908.

720 THE UNITED STATES
vs.
MOSES HAAS.

THE UNITED STATES OF AMERICA,
Southern District of New York, ss:

Martin Engel, being duly sworn, says, that he resides at No. 29 East 33rd Street, Borough of Manhattan, City of New York; that he desires to offer himself as a surety for the appearance of the above-named defendant, Moses Haas, in accordance with the provisions of the bond hereto annexed, and makes this affidavit for the purpose of securing his acceptance as such surety. That he is the owner in fee simple of certain lots, pieces or parcels of land situated in the Borough of Manhattan, City of New York, and known as Northwest Corner of Thompson and Grand Streets; that the numbers of said lots are 25, 28, 30 and 32 Grand Street and 28 and 30 Thompson Street; that he purchased said property in the year 1907; that the purchase price was the sum of $250,000; that the present value of said property is $250,000, and that a mortgage of $158,000 is outstanding on said premises; and that there are no other liens or encumbrances on said premises; that there are
720½ no judgments against him in the Courts of this State or elsewhere; that he is on no other bond except a bond in the sum of $10,000 given for the appearance of H. Field before Comm'r John A. Shields, and a bond in the sum of $5000 given for the appearance of one Rothschild; that he is worth the sum of $200,000 over and above his just debts.

(8'g'd) MARTIN ENGEL.

Sworn to before me this 1st day of June, 1908.

(8'g'd) JOHN A. SHIELDS,
United States Commissioner for the Southern District of New York.

721 UNITED STATES
vs.
FREDERICK A. PECKHAM.

After careful consideration of the testimony submitted in this case, I am of the opinion that a case of probable cause has been made out against the accused and he is hereby committed to the custody of the United States Marshal for the Southern District of New York until a warrant for his removal shall issue by the U. S. District Judge, or he shall be otherwise dealt with according to law.

The objections raised by counsel for the accused I think are substantially decided by me in the memoranda made by me in the case of United States vs. Haas.

New York, December 1, 1908.

JOHN A. SHIELDS,
U. S. Commissioner.

722 United States Circuit Court, Southern District of New York.

FREDERICK A. PECKHAM, Petitioner,
against
WILLIAM HENCKEL, U. S. Marshal, and JOHN A. SHIELDS, U. S. Commissioner, Respondents.

Nash Rockwood and Max D. Steuer for the Petitioner.
Henry L. Stimson, U. S. Attorney, for Respondents.

WARD, *Circuit Judge:*

Habeas Corpus. This case is like that of Haas v. Henkel in which an opinion has been handed down except in two particulars. First, it involves no application for the introduction of additional testimony. Second, the petitioner is already under an order of removal to the District of Columbia granted by the District Court for the Northern District of New York, which is stayed until the determination of his appeal to the Circuit Court of Appeals.

723 If the indictments found in 1905 under which the removal has been ordered were for the same offenses as the indictments found in 1908 now under consideration, it would plainly be an evasion of the stay granted in the Northern District of New York to remove the petitioner under the subsequent indictments. But the 1905 indictments under which he has been ordered to be removed charge a conspiracy at a different time to commit different offenses from the conspiracy and offenses charged in the 1908 indictments.

So if it were now sought to remove the petitioner to a different district from that to which he has already been ordered to be removed for trial, it would no doubt be proper to remove him for trial under the original order, *in re Beavers*, 125 F. R. 198; *Taylor v. Taintor*,

16 Wall. 374. But he is triable under both sets of indictments in the same place, viz: the District of Columbia.

It is further suggested that removal under the 1908 indictments found in the District of Columbia would be a disrespect of the order of the District Court for the Northern District of New York
724 under the 1905 indictments, but that Court, as well as the District Court for the Southern District of New York is acting in aid of the same Court and it is not perceived how granting its request can be so regarded nor how the petitioner can in any way be injured thereby. If the order heretofore granted to remove him is sustained by the Circuit Court of Appeals he will not be injured by a present removal to the District of Columbia. On the other hand, if it is reversed, he will still be subject to removal under the 1908 indictments.

Finally, it is said that the petitioner should not be removed for trial to the District of Columbia because of the indictments that have been found against him in the Southern District of New York. But this is a right not of the petitioner, but of the Court, and may be waived. *Beavers v. Haubert*, 118 U. S. 77. Therefore for the reasons stated in the case of Haas v. Henkel the writ is discharged and the petitioner remanded.

H. G. WARD,
U. S. C. J.

January 8, 1909.

725 Endorsed: Circuit Court of the United States for the Southern District of New York. Frederick A. Peckham, against William Henkel and John A. Shields. Decision. Ward, C. J. U. S. Circuit Court, Southern District of N. Y., Filed Jan. 8, 1909, John A. Shields, Clerk.

726 United States Circuit Court, Southern District of New York.

MOSES HAAS
against
WILLIAM HENKEL, U. S. Marshal, and JOHN A. SHIELDS, U. S. Commissioner.

FREDERICK A. PECKHAM
against
WILLIAM HENKEL, U. S. Marshal, and JOHN A. SHIELDS, U. S. Commissioner.

Nash Rockwood and Max D. Steuer for Petitioners.

Henry L. Stimson, U. S. Attorney, Attorney for Henkel and Shields.

WARD, *Circuit Judge:*

The petitioners Haas and Peckham having been committed under U. S. Rev. Stat. 1014 by the Commissioner to await removal proceedings before the District Judge, have upon habeas corpus been

remanded. Being about to appeal to the Supreme Court, they ask for a supersedeas and that they may be admitted to bail pending appeal. I think I have the discretion to do both under Supreme Court Rules 34, subdivision 2, and 36, subdivision 2. The United States Attorney objects that the habeas corpus should not
727 have been taken out until after the District Judge had passed upon the question of removal. The petitioners are following the practice in the case of Benson v. Henkel, 198 U. S. 1, in which the petitioner under the same circumstances was allowed a supersedeas and was admitted to bail.

The attorneys for the petitioner state that in the following cases where after orders of removal under Sec. 1014, writs of habeas corpus had been discharged, the defendants were admitted to bail pending an appeal: Beaver v. Henkel, 194 U. S. 73; Hyde v. Shine, 199 U. S. 62; Price v. McCarty, 83 F. R., 830; 89 F. R. 84; Tinsley v. Treat, 205 U. S. 20; Beaver v. Haubert, 198 U. S. 77, and this is not contradicted in the brief of the U. S. Attorney.

Justice Gray in Hudson v. Parker, 156 U. S. 277, 285, said:

"The statutes of the United States have been framed upon the theory that a person accused of crime shall not until he has finally been adjudged guilty in the court of last resort be absolutely compelled to undergo imprisonment or punishment, but may be admitted to bail not only after arrest and before trial, but after conviction and pending a writ of error."

It may be that this language was obiter, but it was not disapproved by his brethren, the views of those who dissented being entirely consistent with it. Justice Gray was speaking of a
728 defendant who had been actually convicted and it is not necessary for me to go so far in granting the request of the petitioners as I feel I should do, they being merely charged with crime.

If this practice causes prejudicial delay in criminal prosecutions, it results from the provisions of Sec. 1014 U. S. Rev. Stat., and relief should be sought, not from the courts, but from Congress, as Attorney General Moody and Bonaparte have suggested in their annual reports, 1905–1907. All the orders may be settled on Monday next at 10 A. M.

H. G. WARD,
U. S. C. J.

Endorsed: Circuit Court of the United States for the Southern District of New York. Moses Haas against William Henkel and John A. Shields. Frederick A. Peckham against the Same. Opinion. Ward, C. J.—U. S. Circuit Court, Southern District of N. Y. Filed Jan. 15, 1909. John A. Shields, Clerk.

729 United States Circuit Court, Southern District of New York.

FREDERICK A. PECKHAM, Petitioner,
vs.
WILLIAM HENKEL, United States Marshal, in and for the Southern District of New York.

SIRS: Please take notice that the annexed order will be presented for settlement to the Honorable Henry G. Ward, United States Circuit Judge, at his chambers at 10 a. m. Tuesday, January 12th, 1909.

Dated, New York, January 11, 1909.

Respectfully,

HENRY L. STIMSON,
U. S. Attorney, Southern District of New York, Attorney for Respondent, Room 30 P. O Building, Borough of Manhattan, City of New York.

To Nash Rockwood, Esq., Attorney for Petitioner, 35 Nassau St., New York City.

730 At a Stated Term of the United States Circuit Court for the Southern District of New York in the Second Circuit held at the United States Court House and Post Office Building in the Southern District of New York on the 18th day of January, 1909.

Present: Hon. Henry G Ward, Circuit Judge.

FREDERICK A. PECKHAM, Petitioner,
vs.
WILLIAM HENKEL, United States Marshal, in and for the Southern District of New York.

A writ of habeas corpus having been issued herein upon the second day of December, 1908, upon a petition filed herein on said second day of December, 1908, directed to William Henkel, Marshal of the United States for the Southern District of New York as the person having the custody of the above named Frederick A. Peckham commanding the said William Henkel as said Marshal to produce the body of the said Frederick A. Peckham before the United States Circuit Court for the Southern District of New York at a Term thereof to be held at the United States Court and Post Office
731 Building, Borough of Manhattan, City of New York in said Southern District on the fourth day of December, 1908, and the said Frederick A. Peckham having been produced at that time before said Court by said William Henkel and a return to said writ of habeas corpus having been made and filed by said William Henkel as such United States Marshal as aforesaid, and a traverse having been filed to said return by said Frederick A. Peckham and a writ

of certiorari having been issued herein upon said second day of December, 1908, directed to John A. Shields, United States Commissioner for the Southern District of New York, commanding him to certify to said Circuit Court on said fourth day of December, 1908, the record of the proceedings had before him in the matter of the removal of Frederick A. Peckham to the District of Columbia, and said John A. Shields, as United States Commissioner for the Southern District of New York having made return to said writ of certiorari on said fourth day of December, 1908, and said writ of habeas corpus and said return and said traverse to said return having come on for hearing upon said fourth day of December, 1908, and argument having been made thereon by Nash Rockwood, Esq., and Max Steuer, Esq., of counsel for the petitioner Frederick A. Peckham in support of said writ and by G. H. Dorr, Esq., Assistant United States Attorney, in opposition thereto.

Now, on reading and filing the said writ of habeas corpus and said petition of said Frederick A. Peckham, the said return of said William Henkel to said writ of habeas corpus, and the said
732 traverse to said return by said Frederick A. Peckham, and said return by said John A. Shields to said writ of certiorari, and on motion of Henry L. Stimson, United States Attorney for the Southern District of New York, it is

Ordered that said motion on said writ of habeas corpus to discharge the said Frederick A. Peckham be and it hereby is in all respects denied, and that said Frederick A. Peckham be and he hereby is remanded to the custody and control of said William Henkel, United States Marshal for the Southern District of New York.

H. G. WARD, *U. S. C. J.*

Endorsed: U. S. Circuit Court, Southern District of New York. Frederick A. Peckham, versus William Henkel, U. S. Marshal, in and for the Southern District of New York. Order and Notice of Settlement. Henry L. Stimson, United States Attorney, Attorney for U. S. Service of a copy of the within is hereby admitted. New York, Jany. 11, 1909. Nash Rockwood, Attorney for Petitioner. U. S. Circuit Court, Southern District of N. Y., Filed Jan. 18, 1909. John A. Shields, Clerk.

733 In the Circuit Court of the United States, for the Southern District of New York.

In the Matter of the Petition of Frederick A. Peckham for writs of habeas corpus and certiorari.

FREDERICK A. PECKHAM, Petitioner,
vs.
WILLIAM HENKEL, United States Marshal, in and for the Southern District of New York, and John A. Shields, United States Commissioner for the Southern District of New York.

The petition of the above named Frederick A. Peckham for an order allowing an appeal to the Supreme Court of the United States

from the final order hereinbefore entered in this action respectfully shows:

1. That the petitioner and appellant above named is a resident of the City of Chicago, in the State of Illinois, United States of America, and was such resident at all of the times hereinafter mentioned.

2. The petitioner and appellant above named, feeling himself aggrieved by the final order heretofore made and entered by this Court on the 18 day of January, 1909, whereby it was ordered that the application for a writ of habeas corpus directed to William Henkel, United States Marshal in and for the Southern District of New York, requiring the said Marshal to bring and have your petitioner before this Court and that his application for a writ of certiorari, directed to the Hon. John A. Shields, United States Commissioner for the Southern District of New York, commanding him to return all proceedings against your petitioner to the said Circuit Court for the Southern District of New York forthwith for
734 such action as might be proper in the premises, being denied, your petitioner's writ of habeas corpus discharged, and your petitioner remanded; now comes Nash Rockwood and Max D. Steuer, his solicitors and counsel, and petitions the Court for an order allowing him to prosecute an appeal from said final order to the Supreme Court of the United States under and according to the laws of the United States in that behalf made.

Your petitioner is advised by counsel that there are grave doubts as to whether the proceedings referred to in the petition and in the affidavits subsequently filed in said Circuit Court on a motion to add to the record therein, have not infringed the constitutional rights of your petitioner, and whether the commitment of your petitioner and the restraint of his person, referred to in said petition, are not without authority of law, and whether the said United States Commissioner before whom your petitioner was arraigned, as set forth in said petition, had jurisdiction either to require bail of your petitioner or to commit your petitioner in default thereof; and is further advised by his said counsel that they are of the opinion that your petitioner's constitutional rights have been infringed by the said proceedings and that his detention under and by virtue of the said commitment issued by the said Commissioner, as referred to in the said petition, and the denial of his discharge upon said writs of habeas corpus and certiorari, are all in violation of his rights under the Constitution of the United States, and your petitioner desires in good faith to submit the constitutional questions and such other questions as are pertinent
735 thereto or involved therein to the Supreme Court of the United States for their determination.

And for the relief asked herein your petitioner will ever pray.

FREDERICK A. PECKHAM,
Petitioner.

NASH ROCKWOOD,
378 *Broadway, Saratoga Springs, N. Y.*

MAX D. STEUR,
115 *Broadway, Borough of Manhattan, New York City, N. Y.*

UNITED STATES OF AMERICA,
Southern District of New York, ss:

Frederick A. Peckham, being duly sworn, says that he is the petitioner above named; that the foregoing petition of his own knowledge is true, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

FREDERICK A. PECKHAM

Subscribed and sworn to before me this 18th day of January, 1909.
H. G. WARD, *U. S. C. J.*

736 The foregoing petition on appeal is granted and it is

Ordered, that pending the determination of said appeal and until the further order of this Court, after decision thereof, all proceedings herein and all proceedings for the removal of said Frederick A. Peckham to the District of Columbia, under and by virtue of the indictments referred to in the petition for a writ of habeas corpus herein, be and they are hereby stayed.

Further ordered, that pending said appeal said defendant Frederick A. Peckham be released on bail to await the decision and determination of said appeal.

Supersedeas bond fixed at Twenty-five hundred Dollars ($2,500.)

Taken in open court this 18th day of January, 1909.

H. G. WARD.
Circuit Court Judge.

Endorsed: In the Circuit Court of the United States for the Southern District of New York. Frederick A. Peckham, Petitioner, vs. William Henkel, United States Marshal in and for the Southern District of New York, and John A. Shields, United States Commissioner for the Southern District of New York. Petition for Order Allowing Appeal With Order Annexed Allowing Same and Staying Proceedings. Nash Rockwood, Saratoga Springs, N. Y., Max D. Steuer, New York City, N. Y. Copy Received January 18, 1909. Henry L. Stimson, U. S. Attorney. U. S. Circuit Court, Southern District of N. Y., Filed Jan. 18, 1909. John A. Shields, Clerk.

737 In the Supreme Court of the United States.

In the matter of the petition of Frederick A. Peckham for Writs of Habeas Corpus and Certiorari.

FREDERICK A. PECKHAM, Petitioner,
vs.
WILLIAM HENKEL, United States Marshal in and for the Southern District of New York, and John A. Shields, United States Commissioner for the Southern District of New York.

Comes now the petitioner, Frederick A. Peckham and files the following Assignment of Errors upon which he will rely upon his prosecution of the appeal from the final order made in the Circuit Court

of the United States for the Southern District of New York on the 18th day of January, 1909, in the above entitled cause, dismissing the writs of habeas corpus and certiorari and remanding your petitioner to the custody of the United States Marshal.

1. That the said Court erred in dismissing the petitioner's writs of habeas corpus and certiorari and in remanding him to the custody of the Marshal.

2. That the said Court erred in refusing the discharge of said petitioner.

3. That the said Court erred in holding that the restraint of the petitioner's liberty is legal.

4. That the said Court erred in holding that the restraint of the petitioner is not a violation of his constitutional rights, under the Constitution of the United States.

738 5. That the said Court erred in holding that the alleged indictments in the said record contained, or either of them, set forth a crime or offense against the laws of the United States.

6. That the said court erred in holding and deciding that any of the counts of the indictments charged a conspiracy to defraud the United States within the meaning of section 5440 of the Revised Statutes.

7. That the said court erred in holding and deciding that any of the counts of any of the indictments charged a conspiracy to commit the offense against the United States defined by section 5451 of the Revised Statutes.

8. That the said court erred in holding that any of the indictments charged the offenses of bribery.

9. That the said court erred in holding that any of the indictments charged the offense of conspiring to promise, offer and give to an officer of the United States and a person acting for and in behalf of the United States in an official function, under and by virtue of a certain department and office of the government, a sum of money to induce him to do acts in violation of his lawful duty.

10. That the said Court erred in holding that the said alleged indictments, or either of them, were properly admitted in evidence before the Honorable Commissioner to prove that there was probable cause to believe that your petitioner was guilty of a crime or offense against the laws of the United States.

11. That the said Court erred in declining to hold and de-
739 cide that the said Commissioner was without jurisdiction to commit your petitioner for removal to the District of Columbia, for the reason that said petitioner was under indictment in the Southern District of New York for the same offenses charged against him by the indictments found in the District of Columbia, as disclosed by the record herein, it appearing that your petitioner had been apprehended upon said New York indictments and had been admitted to bail, that he had demurred to the sufficiency of the indictments and that said demurrers had been overruled.

12. That the said Court erred in declining to find and decide that your petitioner was legally in custody in the Southern District of New York pursuant to indictments found in said district, awaiting

trial for the same offenses for which proceedings were instituted before said Commissioner to effect the removal of your petitioner to the District of Columbia.

13. That the said Court erred in declining to hold and decide that the alleged crimes set forth in the four indictments found in the District of Columbia are, and each of them is, barred by the Statute of Limitations.

14. That the said Court erred in declining to hold and decide that Holmes was not an officer of the United States within the meaning of that term, as used in section 5451 and all the other sections of the Revised Statutes of the United States pertinent to the charge attempted to be set forth.

15. That the said Court erred in holding that the sufficiency of the indictment is to be determined by the court in which it was found, to-wit, the Supreme Court of the District of Colum-
740 bia, and is not a matter of inquiry in removal proceedings.

16. That the said Court erred in declining to hold and decide that the indictments relating to section 5451 of the Revised Statutes do not sufficiently charge the violation of that Section.

17. That the said Court erred in declining to hold and decide that no count of any of the indictments sufficiently charges any offense against the United States, and that since the application for removal is based on the indictments alone, and no evidence was offered to sustain them, that the Commissioner was not vested with jurisdiction to commit your petitioner for removal.

18. That the Court erred in declining to hold and decide that the alleged crime of conspiracy to bribe did not merge in the completed offense.

19. That the said Court erred in declining to hold and decide that the preliminary complaint, upon which the warrant was issued against your petitioner, was insufficient, it appearing that the same was upon information and belief, and not upon the positive knowledge of the affiant; and also that a bench warrant from the District of Columbia was not filed with the said complaint at the time that said warrant was issued.

20. That the said Court erred in declining to hold and decide that the previous decision of United States Judge Holt, discharging the defendant Haas, was technically *res adjudicata*, and should be held to be conclusive upon the questions involved before said Court.

21. That the said Court erred in refusing and denying the application and motion of your petitioner to have certain testi-
741 mony and photographic exhibits relating to indictment No. 26988 made a part of the record before said Court of the United States in this proceeding.

22. That the said Court erred in declining to hold and decide that no one of the papers admitted in evidence as indictments had any legal inception.

23. That the said Court erred in holding and deciding that any one of the papers admitted in evidence as indictments was proved to be a valid or legal indictment, and that any one of the said papers

furnished any evidence or probable cause to believe the petitioner guilty of a crime, or was admissible in evidence in the proceeding.

24. That the said Court erred in not holding and deciding that your petitioner is unlawfully restrained of his liberty.

25. That the said Court erred in not holding and deciding that your petitioner is deprived of his liberty without due process of law within the meaning of the Fifth Amendment to the Constitution of the United States.

26. That the said Court erred in holding that the commitment issued by the said Commissioner was not without legal authority or jurisdiction of any kind, and was not utterly void and ineffectual, and that the petitioner's detention and imprisonment thereunder was not in violation of the Constitution of the United States and in violation of his privileges and immunities thereunder.

27. That the said Court erred in declining to hold and decide that your petitioner's detention was in violation of Article V of the Amendments to the Constitution of the United States, in that
742 the said United States Commissioner had no jurisdiction to order the arrest and commitment of your petitioner, and in that your petitioner is held to answer for a crime without any sufficient or valid indictment of a grand jury.

28. That the said Court erred in declining to hold and decide that the restraint of your petitioner is in violation of Article IV of the Amendments to the Constitution of the United States, because it appears from the indictment upon which the warrant in this case was issued that it was wholly void.

29. That the said Court erred in failing to hold and decide that the restraint of your petitioner is in violation of the provisions of Article VI of the Amendments to the Constitution of the United States, for the reason that upon the proof before the Commissioner and before the said Court, it was shown that the offenses charged in the indictment were not committed in the District of Columbia.

30. That the said Court erred in declining to hold and decide that the United States Commissioner was without jurisdiction to commit the defendant Peckham for removal to the District of Columbia for the reason that an order for the removal of said defendant to the District of Columbia had been previously granted by United States Judge Ray in the Northern District of New York, from which order the defendant Peckham had appealed and said Judge Ray had granted a writ and stay of execution of said order until the determination of said appeal; in the meantime said defendant had been enlarged on bail and said Court further erred in declining to hold and decide that said Peckham, by virtue of said proceedings, was legally in custody for removal to the District of
743 Columbia at the time of the institution of these proceedings before United States Commissioner Shields.

32. That the said Court committed other errors appearing on the record.

Wherefore, your petitioner prays that the order dismissing the said Writs of Habeas Corpus and Certiorari and remanding your

petitioner to the custody of the United States Marshal be reversed and that your petitioner be discharged from custody.

(Signed) FREDERICK A. PECKHAM,
Petitioner.

NASH ROCKWOOD,
MAX D. STEUER,
Attorneys for Petitioner.

Endorsed: In the Supreme Court of the United States, Petitioner, vs. William Henkel, United States Marshal in and — the Southern District of New York, and John A. Shields, United States Commissioner for the Southern District of New York. Assignment of Errors. Nash Rockwood, 378 Broadway, Saratoga Springs, N. Y.; Max D. Steuer, 115 Broadway, Borough of Manhattan, New York City, N. Y. U. S. Circuit Court, Southern District of N. Y. Filed Jan. 18, 1909. John A. Shields, Clerk.

744 In the Supreme Court of the United States.

UNITED STATES
vs.
FREDERICK A. PECKHAM.

Bond on Appeal.

UNITED STATES OF AMERICA.
Southern District of New York:

Be it remembered that on the 18th day of January, 1909, before me, John A. Shields, U. S. Com., personally came Frederick A. Peckham, as principal, and ——— ———, as surety, and severally acknowledged themselves to owe to the United States of America, that is to say: the said Frederick A. Peckham the sum of Twenty five hundred Dollars ($2500.), and the said — the sum of Twenty five hundred Dollars ($2500.), separately to be levied and made on their respective goods, chattels, lands and tenements to the United States if default shall be made in the condition following, to-wit

Whereas, the said Frederick A. Peckham was detained in the custody of William Henkel, as United States Marshal for the Southern District of New York, under commitment issued by the Hon. John A. Shields, Commissioner for the Southern District of
745 New York, in a proceeding to secure the removal of the said Frederick A. Peckham to the District of Columbia on the 2nd day of December, 1908; and

Whereas, the said Frederick A. Peckham made an application to the United States Circuit Court before Hon. Henry G. Ward, Circuit Judge, on the said 2nd day of December, 1908, for a writ of certiorari directed to the Hon. John A. Shields, United States Commissioner, for the Southern District of New York, in aid of the said writ of habeas corpus, commanding that he return all proceedings against your petitioner to the Circuit Court herewith for such action as might be proper in the premises; and

Whereas, on the 18th day of January, 1909, the said Court did make its final order dismissing said writs of habeas corpus and certiorari, and remanding said Frederick A. Peckham; and

Whereas, the said Frederick A. Peckham has appealed from the said final order to the Supreme Court of the United States; and

Whereas, the said Hon. Henry G. Ward, United States Circuit Judge, has duly allowed said appeal and has ordered that pending said appeal said Frederick A. Peckham be released on bail, and has fixed the amount of the same at Twenty five hundred Dollars ($2500.); and

Whereas, it is ordered that the said Frederick A. Peckham be enlarged upon bail in the sum of Twenty five hundred Dollars ($2500) for his appearance to answer the exigency and determination of said appeal and to personally abide the final de-
716 cision and determination of the said Supreme Court of the United States in that behalf:

Now therefore, the condition of this obligation is such that if the said Frederick A. Peckham shall duly appear in the United States Circuit Court for the Southern District of New York to answer the exigency and determination of said appeal and personally abide the final decision and determination of the said Supreme Court of the United States and the said Circuit Court of the United States upon the mandate of the said Supreme Court of the United States, and obey and abide the said orders of the said Circuit Court of the United States and not depart without leave, upon the conditions aforesaid and upon the entry of said orders upon said appeal, then this recognizance to be void; otherwise to remain in full force and virtue.

(Signed) FREDERICK A. PECKHAM [L. S.]
(Signed) MARTIN ENGEL [L. S.]

Taken and Acknowledged before me the day and year first above written.

JOHN A. SHIELDS,
U. S. Commissioner.

717 SOUTHERN DISTRICT OF NEW YORK, ss:

Martin Engel being duly sworn, says that he is worth the sum of Five thousand Dollars ($5000.) over and above his just debts and liabilities.

MARTIN ENGEL.

Sworn to before me this 18th day of January, 1909.

JOHN A. SHIELDS,
U. S. Commissioner.

Recognizance approved as to form and sufficiency.
Dated January 18th, 1909.

JOHN A. SHIELDS,
United States Commissioner.

Endorsed: In the Supreme Court of the United States. United States vs. Frederick A. Peckham. Bond on Appeal. Nash Rockwood, 378 Broadway, Saratoga Springs, N. Y., Max D. Steuer, 115 Broadway, Borough of Manhattan, New York City, N. Y. Bail in $2500, to be taken by the Commissioner. H. G. Ward, U. S. C. J. Feb'y 18. 09. U. S. Circuit Court, Southern District of N. Y., Filed Jan. 18, 1909, John A. Shields, Clerk.

748 In the Supreme Court of the United States.

In the Matter of the Petition of FREDERICK A. PECKHAM for Writs of Habeas Corpus and Certiorari.

FREDERICK A. PECKHAM, Petitioner,
against
WILLIAM HENKEL, United States Marshal in and for the Southern District of New York, and John A. Shields, United States Commissioner for the Southern District of New York.

Know all men by these presents, That we, Frederick A. Peckham, as principal, and Martin Engel as surety, are held and firmly bound unto the United States of America for the full and just sum of Two hundred and fifty Dollars ($250.), to be paid to the said United States. For which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators jointly and severally firmly by these presents.

Sealed with our seals and dated this 18th day of January, in the year One thousand Nine hundred and nine.

Whereas, lately, to-wit: on the 18th day of January, 1909, at a Circuit Court of the United States in and for the Southern District of New York, in a proceeding therein pending, an order was entered dismissing writs of habeas corpus and certiorari procured by the above named petitioner, Frederick A. Peckham; and said petitioner has duly obtained an appeal from said order to the Supreme Court of the United States and has filed a copy thereof in the Clerk's office of the said Circuit Court for the review of the same:

749 Now, the condition of the above obligation is such that if the said petitioner, Frederick A. Peckham, shall prosecute said appeal to effect, and shall answer all costs if he shall fail to make the said appeal good, then this obligation shall be void, otherwise to remain in full force and effect.

Sealed and delivered, and taken and acknowledged this 18th day of January, in the year One Thousand Nine Hundred and Nine, before me, John A. Shields, United States Commissioner for the Southern District of New York.

FREDERICK A. PECKHAM. [L. S.]
MARTIN ENGEL. [L. S.]

In presence of
JOHN A. SHIELDS.
U. S. Commissioner.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

Frederick A. Peckham and Martin Engel, each being duly sworn, for himself says: That he is worth more than the sum of Five hundred Dollars, ($500.) over and above all his just debts and liabilities.

FREDERICK A. PECKHAM.
MARTIN ENGEL.

Sworn to before me this 18th day of January, 1909.

JOHN A. SHIELDS,
U. S. Commissioner for the Southern District of New York.

750 Approved as to form, amount and sufficiency. Dated, January 18th, 1909.

JOHN A. SHIELDS,
United States Commissioner.

Endorsed: In the Supreme Court of the United States. Frederick A. Peckham, Petitioner, vs. William Henkel, United States Marshal, in and for the Southern District of New York, and John A. Shields, United States Commissioner for the Southern District of New York. Bond for Costs. Nash Rockwood 378 Broadway, Saratoga Springs, N. Y. Max D. Steuer, 115 Broad., New York City, N. Y. Bond in $250. for costs to be taken by Commissioner. H. G. Ward, U. S. C. J. Feb'y 18 09. U. S. Circuit Court, Southern District of N. Y., Filed Jan. 18, 1909, John A. Shields, Clerk.

751 In the Supreme Court of the United States.

In the Matter of the Petition of FREDERICK A. PECKHAM for Writs of Habeas Corpus and Certiorari.

FREDERICK A. PECKHAM, Petitioner,
against
WILLIAM HENKEL, United States Marshal in and for the Southern District of New York, and John A. Shields, United States Commissioner for the Southern District of New York.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Hon. Henry L. Stimson, United States District Attorney for the Southern District of New York; John A. Shields, Clerk of the United States Circuit Court for the Southern District of New York; William Henkel, United States Marshal in and for the Southern District of New York; John A. Shields, Esq., United States Commissioner for the Southern District of New York, and Thomas Alexander, Clerk of the United States District Court for the Southern District of New York.

You and each of you are hereby cited and admonished to be at the Supreme Court of the United States at the City of Washington

within thirty days from the date of this writ, pursuant to the appeal duly allowed by the Circuit Court for the Southern District of New York and filed in the Clerk's office of said Court on the 18
752 day of January, 1909, in a certain case entitled:

In the Circuit Court of the United States for the Southern District of New York.

In the Matter of the Petition of FREDERICK A. PECKHAM for Writs of Habeas Corpus and Certiorari.

FREDERICK A. PECKHAM, Petitioner,
against
WILLIAM HENKEL, United States Marshal in and for the Southern District of New York, and John A. Shields, United States Commissioner for the Southern District of New York,

to show cause, if any, why the final order of the said Circuit Court rendered against said appellant, as in said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that respect.

Witness Honorable Henry G. Ward, Judge of the Circuit Court of the United States, this 18th day of January, 1909.

HENRY G. WARD,
Justice of the Circuit Court of the United States.

753 [Endorsed:] 1 439 E. & Ae. 2870. In the Supreme Court of the United States. Frederick A. Peckham, Petitioner, against William Henkel, United States Marshal in and for the Southern District of New York, and John A. Shields, United States Commissioner for the Southern District of New York. Original Citation on Appeal. Nash Rockwood, 378 Broadway, Saratoga Springs, N. Y. Max D. Steuer, 115 Broadway, New York City, N. Y. U. S. Circuit Court, Southern District, N. Y. Filed Jan. 18, 1909. John A. Shields, Clerk. Copy Received January 18, 1909. Henry L. Stimson, U. S. Attorney.

754 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John A. Shields, Clerk of the Circuit Court of the United States of America, for the Southern District of New York, in the Second Circuit, do hereby certify that the foregoing pages, numbered from one to 753 inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the cause entitled

FREDERICK A. PECKHAM, Petitioner,
against
WILLIAM HENKEL, United States Marshal in and for the Southern District of New York, and John A. Shields, United States Commissioner for the Southern District of New York,

as the same remain of record and on file in my office.

In Testimony Whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 19th day of February, in the year of our Lord One Thousand Nine Hundred and nine, and of the Independence of the said United States the One Hundred and Thirty-third.

JOHN A. SHIELDS, *Clerk.*

[Seal of U. S. Circuit Court, South. Dis., New York.]

[Endorsed:] United States Supreme Court. Frederick A. Peckham, Petitioner, vs. William Henkel, U. S. Marshal, S. D., N. Y., and John A. Shields, U. S. Comm'r, S. D., N. Y. Transcript of Record from the Circuit Court of the United States for the Southern District of New York.

Endorsed on cover: File No. 21,523. S. New York, C. C. U. S. Term No. 366. Frederick A. Peckham, Appellant, vs. William Henkel, United States Marshal for the Southern District of New York, et al. Filed February 20th, 1909. File No. 21,523.

Office Supreme Court, U. S.
FILED
MAR 15 1909
JAMES H. McKENNEY,
Clerk.

No. 366.

In the Supreme Court of the United States.

OCTOBER TERM, 1908.

FREDERICK A. PECKHAM, APPELLANT,

v.

WILLIAM HENKEL, UNITED STATES MARSHAL, ETC., ET AL.

ON APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

MOTION TO ADVANCE.

In the Supreme Court of the United States.

OCTOBER TERM, 1908.

FREDERICK A. PECKHAM, APPELLANT, v. WILLIAM HENKEL, UNITED STATES Marshal, etc., et al.	No. 727.

MOTION TO ADVANCE.

This is an appeal from an order of the Circuit Court of the Southern District of New York, discharging the writ of habeas corpus and remanding the appellant to the custody of the appellee to await removal to the District of Columbia for trial upon two indictments pending against him there.

These indictments are two of the indictments concerned in the appeal of Moses Haas (No. 728) in which a motion to advance is also made. The facts in this case are like those in the case of Haas, except that in the two indictments against Peckham the fraud and unlawful act to be committed by the Associate Statistician of the Department of Agriculture consisted only in divulging the contents of the cotton-crop reports in advance of their lawful issue.

76098—09

The questions raised in their appeal are, so far as the two indictments go, the same as those raised in the appeal of Haas.

Peckham raises one further question. Upon the finding of the 1905 indictments he was arrested in the Northern District of New York and gave bond before a United States Commissioner there for his appearance in Washington; he was later surrendered by his surety and sued out a writ of habeas corpus, which was discharged. From this order he appealed to the Circuit Court of Appeals, where his case is still undetermined. Upon the discharge of the writ of habeas corpus a warrant for his removal to the District of Columbia was signed, but execution was stayed pending his appeal. Peckham raises in the present appeal, in addition to the questions as stated in the motion to advance in the Haas case, the following question:

Has the Commissioner in the Southern District of New York the power to hold appellant for removal to the District of Columbia, notwithstanding the order of the judge of the Northern District of New York admitting him to bail and staying the execution of the order signed by that judge for his removal to the District of Columbia?

It is important for the public interests that the present appeal be advanced for the reasons set forth in the motion to advance the Haas case, and for the further reason that the joint indictments

against Peckham and Haas should be tried at the same time.

The appellant is at large on bail.

The Solicitor-General therefore moves the court to advance the case and set it down for hearing on such day as may be convenient to the court.

Notice of this motion has been served on opposing counsel.

HENRY M. HOYT,
Solicitor-General.

MARCH, 1909.

O

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1908.

File No. 727.

FREDERICK A. PECKHAM, APPELLANT,

vs.

WILLIAM HENKEL, AS UNITED STATES MARSHAL, &c., APPELLEE.

MEMORANDUM FOR APPELLANT

In Opposition to Motion to Advance Cause.

The Solicitor General has moved for an order to advance said case for a hearing on such day as may be convenient to the court. Before stating our reasons why the motion should not be granted a brief history of the case will be given.

Statement of Procedure.

On August 20, 1905, Edwin S. Holmes, Jr., Frederick A. Peckham, and Moses Haas were indicted in the Supreme Court of the District of Columbia (indictment No. 24,866) charged with having conspired to defraud the United States.

On August 22, 1905, Edwin S. Holmes, Jr., Frederick A. Peckham, and Moses Haas were indicted in the Supreme Court of the District of Columbia (indictment No. 24,867),

charged with having conspired to commit an offense against the United States.

On October 2, 1905, Edwin S. Holmes, Jr., Frederick A. Peckham, and Moses Haas were indicted in the Supreme Court of the District of Columbia (indictment No. 24,907), charged with having conspired to commit an offense against the United States, and, in the second count thereof, with having conspired to defraud the United States.

The defendant Peckham was first arraigned before United States Commissioner Charles M. Davison at Saratoga Springs, New York, upon a complaint filed with said commissioner for his removal to the District of Columbia. The said defendant waived examination, reserving the right to make certain objections at a later date, and gave bail for his appearance at the District of Columbia. On the 2d day of October, 1905, the sureties upon his bail bond surrendered the defendant before said commissioner, pursuant to the provisions of section 1018 of the Revised Statutes of the United States. The commissioner thereupon again committed the defendant to the custody of the United States marshal. Thereupon the defendant Peckham applied to United States Judge Ray for a writ of *habeas corpus*, which was issued upon a petition alleging that the detention of the defendant was contrary to law and to the Constitution of the United States, and that the indictment upon which he was held did not constitute a crime. Hearings were had before Judge Ray upon the return to the writ of *habeas corpus*, and, on January 10, 1906, Judge Ray dismissed the writ and remanded the defendant Peckham to the custody of the marshal. At the same time Judge Ray made an order for the removal of the defendant Peckham to the District of Columbia. Immediate application was made by the defendant for leave to appeal from this order, which was granted, Judge Ray endorsing upon the removal order the following:

> "The defendant having taken an appeal from the
> "within order of removal, and said appeal having

"been allowed, ordered, that the execution of this
"order be stayed until the dismissal or determination
"of such appeal.

"(Sd.) GEORGE W. RAY.
"U. S. Judge."

This appeal is now pending, undetermined, in the Circuit Court of Appeals for the Second Circuit.

While these proceedings in the Northern District of New York were going on, and before their completion before Judge Ray, the defendant Peckham was apprehended upon a warrant issued in the Southern District of New York by United States Commissioner Ridgway upon an indictment found in the District of Columbia for practically the same offense. The matter before Commissioner Ridgway was argued at length and briefs of counsel were submitted. Thereafter, on the 20th day of October, 1905, *and at the same time that the proceedings before Judge Ray were pending and before their completion*, Commissioner Ridgway rendered his decision in substance, holding that the indictment failed to charge a crime or offense, and he thereupon discharged the defendant Peckham, as well as the defendant Haas, who had been arrested at the same time.

Nothing further was heard of the matter *until three years thereafter*, in the month of May, 1908. In that month three indictments were found against the defendant Peckham in the District of Columbia, and two indictments were found against him by a grand jury in the Southern District of New York.

These 1908 indictments relating to the defendant Peckham, stated in their order, are as follows:

Indictment No. 26,086, against Edwin S. Holmes, Jr., Frederick A. Peckham, and Moses Haas, returned to the Supreme Court of the District of Columbia on May 29, 1908, charging conspiracy to defraud the United States.

Indictment No. 26,087, against Moses Haas and Frederick A. Peckham, returned to the Supreme Court of the District

of Columbia on May 29, 1908, charging conspiracy to commit an offense against the United States.

Indictment No. 26,088, against Theodore H. Price, Moses Haas, and Frederick A. Peckham, returned to the Supreme Court of the District of Columbia on May 29, 1908, charging conspiracy to defraud the United States and to commit an offense against the United States.

Indictment No. 1, returned to the Supreme Court of the United States for the Southern District of New York on the 29th day of May, 1908, against Moses Haas and Frederick A. Peckham, charging conspiracy to commit an offense against the United States.

Indictment No. 3, returned to the Supreme Court of the United States for the Southern District of New York on the 29th day of May, 1908, against Edwin S. Holmes, Jr., Moses Haas, and Frederick A. Peckham, charging conspiracy to defraud the United States.

The defendant Peckham was apprehended on the New York indictments and admitted to bail. Thereafter he filed a demurrer to the indictments against him in the New York jurisdiction, which demurrer was subsequently argued before United States Judge Hough and overruled.

Thereafter and on or about the 24th day of June, 1908, removal complaints were filed with United States Commissioner Shields. The proceedings were thereupon adjourned from time to time, and finally came on for hearing before said Commissioner Shields on the 30th day of November, 1908.

In the meantime the United States attorney for the Southern District of New York made a motion for the consent of the Circuit Court that he be permitted to proceed with the proceedings for the removal of the defendant Frederick A. Peckham to the District of Columbia, which consent was subsequently given. The consent, however, was merely to the effect that the District of Columbia might prosecute whatever legal rights it had.

Commissioner Shields committed the defendant to the custody of the United States marshal for removal to the District of Columbia, and thereupon the defendant applied to the United States Circuit Court and obtained writs of *habeas corpus* and certiorari.

The appellee made his return to said writs of *habeas corpus*, alleging that he held the defendant in custody by virtue of the warrant issued by Commissioner Shields in the removal proceedings. The issue thus presented was argued before the Circuit Court, United States Judge Ward presiding, and, after consideration, the writs of *habeas corpus* were dismissed and the defendant remanded to the custody of the marshal. From this decision the defendant Frederick A. Peckham has taken this appeal to this court, and Judge Ward granted a stay of proceedings pending appeal.

POINTS.

I.

THE MOTION SHOULD BE DENIED, AS NO SUFFICIENT REASON IS SHOWN IN THE MOVING PAPERS WHY THIS CASE SHOULD BE ADVANCED.

(*a*) *This is not a criminal case.*

Rule 26 of the Supreme Court states in detail what causes may be advanced. Subdivision 3 of that rule reads as follows:

> "Criminal causes may be advanced by leave of the court on motion of either party."

As this is an appeal from an order dismissing a writ of *habeas corpus* it is not a criminal case; therefore, the above section of the rule is not applicable. Even if it were a criminal case, or a quasi-criminal case, the advancing of a criminal case under the above rule is discretionary with the

court, and has been refused when it appeared that the defendant was not in jail.

Ward *vs.* Maryland, 12 Wall., 164.

(*b*) *This case has never been adjudicated by this court upon the merits.*

Subdivision 4 of rule 26 provides:

> "Cases once adjudicated by this court upon the "merits, and again brought up by writ of error or "appeal, may be advanced by leave of the court on "motion of either party."

This is not such a case, as the case has never been before the court before.

(*c*) *This is not a revenue case or a case which involves or affects a matter of general public interest.*

Subdivision 5 of rule 26 provides:

> "Revenue and other cases in which the United "States are concerned, which also involve or affect "some matter of general public interest, may also, by "leave of the court, be advanced on motion of the "Attorney General."

As this case is not a revenue case and does not involve or affect a matter of general public interest, it does not come under this subdivision.

In Carter *vs.* Greenhough, 109 U. S., 64, this court held:

> "A case will not be taken up out of its order simply "because it is of great public importance."

Chief Justice Waite adding:

> "The questions involved may be of public im- "portance, but that does not necessarily entitle the "parties to a hearing in preference to others. Prac- "tically every case advanced postpones another that "has been on the docket three years awaiting its

> " turn in the regular call. Under these circumstances
> " we deem it our duty not to take up a case out of its
> " order except for imperative reasons."

U. S. *vs.* Norton, 91 U. S., 558, was a criminal case, and the motion to advance was made on behalf of the United States, it being alleged that the questions in dispute would embarrass the operations of the Government while they remained unsettled. This court held:

> " As our rule has but recently gone into operation
> " we will, in this case, accept this statement as sufficient and grant the motion. Hereafter motions to
> " advance upon this ground must state the facts in
> " such manner that we may judge whether the Gov-
> " ernment will be embarrassed in the administration
> " of its affairs by delay. In the present crowded
> " state of the docket it is our duty to see that cases
> " are not unnecessarily brought forward to the preju-
> " dice of others."

Tested by the rule laid down in the two cases decided by this court, above referred to, this motion should be denied. The affairs of the Government cannot be in any way affected by permitting this case to take its regular order of argument, nor are there any imperative reasons, as suggested in the Carter case, why the motion should be granted. Our contention, among others, is that the alleged crimes were barred by the three years statute of limitations, and even if we accept the Government's version of the matter, the indictments were found only two days before the statute of limitations would apply, as is conceded by the Government. Can it now be urged to this court that a matter which the Government permitted to slumber for nearly three years is a matter of such great public importance that the case should be taken out of its regular order in the ordinary course of judicial procedure?

The allegation of the Solicitor General in the moving papers that

> "It is important to the public interests that this appeal may be heard promptly, so that it may be known as soon as possible whether the acts charged are crimes against the United States for which the persons indicted may be tried, and for the further reason that the trial not only of the appellant himself but that of his co-defendant Holmes is awaiting the decision of this appeal"

Is a mere conclusion, and does not state any facts whatever from which the court can conclude that the case is of any public importance.

(*d*) *There are no special or peculiar circumstances which warrant the advancing of this cause.*

Subdivision 7 of Rule 26 provides:

> "No other case will be taken up out of the order on the docket, or be set down for any particular day, except under special and peculiar circumstances to be shown to the court. * * *"

There are no special and peculiar circumstances connected with this case, as we contend, which bring it within this subdivision of the rule.

II.

THERE ARE THREE CASES IN THIS MATTER, INVOLVING PRACTICALLY THE SAME QUESTIONS, WHICH SHOULD BE HEARD TOGETHER.

The three defendants, Theodore H. Price, Frederick A. Peckham, and Moses Haas, have been in some of the indictments jointly indicted. The same *habeas corpus* proceedings were taken in each case. The defendant Haas now has an appeal pending to this court, being Docket No. 728; the defendant Theodore H. Price has an appeal also pending to this court upon the same questions. The records have been

very recently filed and none of them are printed; they are very voluminous, the record in the Haas case being about nine hundred typewritten pages, the record in the Peckham case being about seven hundred and fifty typewritten pages, and the record in the Price case will be extensive. As these three cases in effect involve the same questions, based upon the same indictments, they should be argued together. The questions involved are of great importance to the defendants, who contend that an effort is being made to deprive them of their liberty without due process of law, upon indictments not founded upon the commission of statutory offenses, and by means of unusual procedure. The records in each of these appeals are so voluminous and the questions involved so important that counsel should be afforded every opportunity to present to this court extensive briefs. As the records have but recently come up to this court, counsel for defendants would be greatly embarrassed in their proper presentation of these cases to this court if subjected to any undue haste in the matter of argument.

III.

THE SUGGESTION THAT THE DECISION OF THIS CASE MAY AFFECT SOME OTHER CASE IN WHICH THE UNITED STATES IS INTERESTED IS NO SUFFICIENT REASON FOR ADVANCING THE ARGUMENT OUT OF ITS REGULAR ORDER.

We do not know that the argument will be used before the court, but we have heard the suggestion made in connection with this motion that the decision of the questions involved in this appeal will affect other removal cases in which the Government of the United States is interested. Can it be seriously urged for the Government that this is any reason why the defendants in the case at bar, and their counsel, should be compelled to argue this case before it is reached in its regular order upon the docket? Of course the decision of any case necessarily affects some other pending or to be

brought, and it is always desirable that judicial decisions should be promptly rendered. We have been unable to find any decision, however, in which the courts have gone to the length of saying that because a particular decision might possibly affect some other pending case, any unusual rules or procedure should be applied to the case which at the time happened to be at bar. Public interest in the decision is not made out by a suggestion that there might possibly be some effect upon any pending case. Public interest must attach to the case from the case itself and from the questions involved in the case itself. We submit that this consideration, if it is urged, which we very much doubt, is not worthy of attention.

For all of the reasons aforesaid the motion should be denied, and the case be permitted to take its regular course, in order that counsel may present to this court a full and comprehensive brief upon the questions here involved.

Respectfully submitted,

NASH ROCKWOOD,
Of Counsel for the Defendant Frederick A. Peckham, 378 Broadway, Saratoga Springs, N. Y.

Dated MARCH 15, 1909.

Office Supreme Court, U. S.
FILED
DEC 7 1960
JAMES R. BROWNING,

SU STATES

for the

UNITED STATES

BRIEF OF APPELLANT

IN THE SUPREME COURT OF THE UNITED STATES

No. 366

FREDERICK A. PECKHAM,
Appellant,

vs.

WILLIAM HENKEL, United States Marshal for the Southern District of New York, et al.,
Respondents.

BRIEF on Behalf of Appellant

Appeal from the Circuit Court of the United States for the Southern District of New York.

This is an appeal by the appellant, Frederick A. Peckham, by allowance duly given, from the final order made and entered in the Circuit Court of the United States for the Southern District of New York on the 18th day of January, 1909, denying the application of the appellant to be discharged from custody on a writ of *habeas corpus* directed to William Henkel, United States Marshal in and for the Southern District of New York, and remanding said Peckham to the custody of the Marshal (see Order, fols. 732-733, and Petition for Appeal with Allowance, fols. 733-737).

Two indictments were found in the District of Columbia upon which the removal of the de-

fendant Peckham to that jurisdiction is now sought. These indictments are known as No. 26,086 (page 197 of Record), and No. 26,087 (page 201 of Record).

Judge Ward when applied to in the *habeas corpus* proceedings held that indictment No. 26086 did not legally charge a crime, so that only indictment No. 26087 is involved in the appeal to this Court (see Opinion of United States Judge Ward in Haas v. Henkel, 166 Fed. Rep., 621; and Peckham v. Henkel, 166 Fed. Rep., 627).

This case differs from the Haas case (No. 367) in the following respects:

1st. It involves only indictments No. 26086 and No. 26087; whereas the Haas case also involved indictments No. 26088 and No. 26089.

2nd. There was no motion in this case that the testimony and photographic exhibits in the Price case should be added to the record, nor any motion to quash the indictments upon the ground that the defendant was called as a witness before the Grand Jury.

3rd. A previous warrant directing the removal of the defendant Peckham to Washington upon an indictment of 1905, was outstanding, from which an appeal was pending to the Circuit Court of Appeals, and United States Judge Ray had granted a stay of the execution of the warrant of removal pending such appeal.

4th. The indictments against Peckham do not involve the question of the accuracy of the reports.

United States Judge Ward, in noting the distinction between this case and the Haas case, observed:

"This case is like that of Haas v. Henkel, "166 Fed., 621, in which an opinion has been "handed down, except in two particulars; first "it involves no application for the introduc- "tion of additional testimony; second, the pe- "titioner is already under an order of removal "to the District of Columbia, granted by the "District Court for the Northern District of "New York, which is stayed until the deter- "mination of his appeal to the Circuit Court "of Appeals.

(See Opinion Judge Ward, 166 Fed. Rep., 628.)

STATEMENT.

This case grows out of what has become known as the "cotton leak" in the Department of Agriculture. In all eleven indictments have been found as follows:

Three indictments in the District of Columbia in the year 1905.

Four indictments in the District of Columbia in the year 1908.

Four indictments in the Southern District of New York in the year 1908.

The defendants concerned in it, who have been indicted in one or more of the indictments, are:

Edwin S. Holmes, Junior.
Theodore H. Price.
Moses Haas and
Frederick A. Peckham.

The sections of the Revised Statutes involved are:

Section 5440:

"If two or more persons conspire either to "commit any offense against the United "States or to defraud the United States "in any manner or for any purpose, "and one or more of such parties do any act "to effect the object of the conspiracy all the "parties to such conspiracy shall be liable to "a penalty of not more than Ten Thousand "Dollars, or to imprisonment for not more "than two years or to both fine and imprison- "ment in the discretion of the Court.

See U. S. Compl. Stat., 1901, Vol. 3, pg. 3676.

Section 5451:

"Every person who promises, offers, or "gives, or causes or procures to be promised "offered, or given, any money or other thing "of value, or makes or tenders any contract, "undertaking, obligation, gratuity, or security "for the payment of money, or for the delivery "or conveyance of anything of value, to any "officer of the United States, or to any person "acting for or on behalf of the United States "in any official function, under or by author- "ity of any department or office of the Govern- "ment thereof, or to any officer or person act- "ing for or on behalf of either House of Con- "gress, or of any committee of either House, "or both Houses thereof, with intent to influ- "ence his decision or action on any question, "matter, cause, or proceeding which may at "any time be pending, or which may by law "be brought before him in his official capacity, "or in his place of trust or profit, or with in- "tent to influence him to commit or aid in "committing, or to collude in, or allow, any "fraud, or make opportunity for the commis- "sion of any fraud, on the United States, or "to induce him to do or omit to do any act "in violation of his lawful duty, shall be pun- "ished as prescribed in the preceding section.

(See U. S. Compl. Stat., 1901, Vol. 3, pg. 3680.)

Section 5501:

> "Every officer of the United States, and "every person acting for or on behalf of the "United States, in any official capacity under "or by virtue of the authority of any depart- "ment or office of the Government thereof; "and every officer or person acting for or on "behalf of either House of Congress, or of "any Committee of either House, or of both "Houses thereof, who asks, accepts, or receives "any money, or any contract, promise, under- "taking, obligation, gratuity, or security for "the payment of money, or for the deliv- "ery or conveyance of anything of value, with "intent to have his decision or action on any "question, matter, cause, or proceeding which "may at any time be pending or which "may be by law brought before him in "his official capacity, or in his place of trust "or profit, influenced thereby, shall be pun- "ished as prescribed in the preceding section.
>
> (See U. S. Compl. Stat., 1901, Vol. 3, pg. 3709.)

The matter has been pending in the Courts in one form or another since 1905. Reference will be made later to these prior proceedings and their effect upon the present case, but so that the Court may be advised of the various steps which have been taken relating to the indictments found in the year 1908 in the Southern District of New York and in the District of Columbia, these indictments and the procedure connected therewith will be considered in their order in so far as they concern the appellant Peckham.

THE TWO NEW YORK INDICTMENTS OF 1908.

On May 29, 1908, there was filed in the United States Circuit Court for the Southern District of New York an indictment against Moses Haas and Frederick A. Peckham, charging them with conspiring to commit an offense against the United States in having violated Section 5440 and Section 5451 of the United States Revised Statutes. (See Indictment, fols. 467-481 of Record.)

On the 29th day of May, 1908, there was also filed in the United States Circuit Court for the Southern District of New York an indictment against Edwin S. Holmes, Junior, Moses Haas and Frederick A. Peckham, charging them with conspiring to defraud the United States in having violated Section 5440 of the United States Revised Statutes. (See Indictment, fols. 481-487 of Record.)

On or about June 1, 1908, the appellant Peckham appeared in open Court in the United States Circuit Court in the City of New York and entered a plea of "not guilty" to the said two indictments so returned to the United States Circuit Court for the Southern District of New York, and was given leave to withdraw said plea and to demur to or move with respect to each of said indictments as he might be advised. On or about said June 1, 1908, said Peckham was admitted to bail in said United States Circuit Court in the sum of Five Thousand Dollars (fols. 716-720).

Thereafter and on or about the 18th day of June, 1908, said Peckham withdrew said plea of "not guilty" and filed a demurrer to each of

the said two indictments in and by which demurrers the defendant asked the dismissal of the indictments for the following reasons:

1. That the acts charged in said indictments did not constitute a crime.

2. That the acts charged in the indictments do not constitute the crime charged, and that no crime known to the law is in fact charged.

3. That the acts concerning which defendants are alleged to have conspired do not constitute a criminal offense, and there is no allegation that any crime was committed.

4. That the facts constituting the alleged crime are not set forth with certainty, as required by law.

5. That the acts concerning which defendants are charged with having conspired do not constitute a violation of law, but merely a violation of a rule of a Department (fols. 488-489).

It was also further alleged in the demurrers:

> "That sufficient facts are not shown to establish the charge of conspiracy in that the act concerning which the defendants are charged to have conspired is not a criminal offense known to the law.

And:

> "That there are no facts alleged showing that the United States was defrauded by any wrongful acts of defendants. (See Demurrer, fols. 490-491).

Argument upon these demurrers was had on or about August 7, 1908, before Honorable Charles M. Hough, United States Judge, who subsequently overruled the same and on or about October 1,

1908, an order was entered overruling said demurrers and directing said Peckham to appear and plead to said indictments so found in the New York jurisdiction on October 12, 1908. (The opinion of Judge Hough in overruling the demurrers is to be found at pages 315-319 of the record; and it is also reported in United States v. Haas, et al., 163 Fed. Rep., 908)

Thereafter and on or about the 8th day of October, 1908, counsel for said Peckham was served with an affidavit and notice of motion returnable on October 12, 1908, at a stated term of the Circuit Court for the Southern District of New York, which motion was made by the United States Attorney for the Southern District of New York for the consent of the said Circuit Court that the United States Attorney for the Southern District of New York be permitted to proceed with removal proceedings for the said Peckham to the District of Columbia in accordance with the provisions of Section 1014 of the Revised Statutes of the United States, it being then alleged that similar indictments had been found against him in the District of Columbia (fols. 517-518).

In the affidavit of Honorable Henry L. Stimson, United States Attorney, the proceedings which had been taken with reference to the indictments in the New York jurisdiction were fully set forth. It was also recited that two similar indictments had been found against the defendant Peckham in the District of Columbia and it was asked for the convenience of the Government's witnesses, in substance, that the New York indictments should remain in statu quo and that the proceedings to remove the defendants and try them in Washington should be proceeded with

(see Notice of Motion and Affidavit of Honorable Henry L. Stimson, fols. 503-515). There was annexed to the moving papers a letter from the Honorable Charles J. Bonaparte, Attorney General of the United States, in which it was stated by him that it was desired to try the defendants in the District of Columbia for the convenience of the Government and its witnesses. The letter from the Attorney General, which was addressed to the Honorable Henry L. Stimson, United States Attorney for the Southern District of New York, contained, among other things, the following statement:

> "On May 29, 1908, there were returned into "the Circuit Court of your District certain "indictments against Theodore H. Price, "Moses Haas and Frederick A. Peckham, to"gether with Edwin A. Holmes, Jr., charging "them with conspiracy to defraud the United "States and to commit offenses against the "States. At the same time similar indict"ments were returned against these men in "the Supreme Court of the District of Col"umbia. Holmes is a resident of Washington, "while Price, Haas and Peckham are at pres"ent in the State of New York.
>
> "You will be good enough to request the "Circuit Court of your District to consent to "the removal of Messrs. Price, Haas and Peck"ham to Washington for trial upon the indict"ments pending there, it being understood of "course that should the trial here result in "acquittal or conviction the indictments in "New York will be dropped. (See letter of Attorney General, fols. 511-515).

This motion for the consent of the Circuit Court to proceed with the removal proceedings to the District of Columbia was made over three months after the removal proceedings had actually been instituted.

An affidavit was filed in behalf of the defendant Peckham in answer to this motion in which was recited all of the proceedings in which he was held under and by virtue of the four indictments found against him in the New York jurisdiction, and concluded as follows:

> "Said Peckham is a resident of Chicago, in "the State of Illinois, although he has been "more or less in the City of New York for "some years past, and claims that he is en"titled to be tried by a jury of the Southern "District of New York where in the charges "preferred against him in the said New York "indictments are alleged to have been com"mitted. And said Peckham submits that he "should not be subjected to trial in a distant "district where he does not reside, and where "he is not known, or before a jury of such dis"trict; and said Peckham submits that he "should not be put to the expense of taking his "witnesses and counsel to Washington for "trial before a foreign jury. (Fols. 520-521.)

Argument on the motion thus presented was had before United States Judge Hough, who thereafter and on October 24, 1908, granted the motion, writing as follows:

> "No legal reason is perceived why every "Court in which a man is indicted should not "legally *attempt* to bring the accused to trial. "If there are many of them and they all try "to get the defendant at the same time — the "ensuing — should be cleared away by the "court or judge, or other authority having the "power of surrender. This Court has not jur"isdiction under U. S. R. S., 1014 that no ob"jection and (I think) can have no right to "object — to the pursuit of such legal reme"dies as the Courts or prosecuting officers of "the District of Columbia may have under "the section of the Rev. State., referred to.

> "The convenience of either prosecutor or de-
> "fendant is not important. The District of
> "Columbia has a legal right to proceed in the
> "way pointed out by the statute, and to such
> "procedure this Courts assents.
> (See Order and Decision, fols. 775-778 of Haas Record; and Order, fols. 524-526 of this Record).

It will be observed that this decision was merely to the effect that the District of Columbia might prosecute whatever legal rights it had; also that there was no concession, consent, or finding that the District of Columbia had a legal right to extradite the defendant Peckham under the circumstances of this case. After the entry of this order nothing further was done with the New York indictments.

THE TWO WASHINGTON INDICTMENTS OF 1908.

On May 29, 1908, *the same day that the two indictments were filed in the Southern District of New York*, each including the defendant Peckham, two indictments alleging similar offenses to have been committed by the same defendants in the District of Columbia were filed in the Supreme Court of the District of Columbia as follows:

On May 29, 1908, indictment No. 26086 against Edwin S. Holmes, Jr., Frederick A. Peckham and Moses Haas, charging conspiracy to defraud the United States, was filed in the Supreme Court of the District of Columbia (see indictment, fols. 245-253).

On May 29, 1908, indictment No. 26087 against Moses Haas and Frederick A. Peckham, charging

conspiracy to commit an offense against the United States, was filed in the Supreme Court of the District of Columbia (see indictment, fols. 254-268).

At this point the Court will observe that on May 29, 1908, *four indictments in all were returned against the defendant Peckham—two indictments in the Southern District of New York charging the conspiracies to have been committed in the Southern District of New York; and two indictments in the District of Columbia charging the same conspiracies to have been committed in the District of Columbia.*

On June 24, 1908, *after the defendant had been arraigned upon the New York indictments and had demurred thereto*, there was presented to John A. Shields, Esq., United States Commissioner, an affidavit of Honorable Goldthwaite H. Dorr, an Assistant United States Attorney for the Southern District of New York, in which affidavit Mr. Dorr stated that on the 29th day of May, 1908, two indictments had been found in the District of Columbia, as aforesaid, against the defendant Peckham. He annexed to this affidavit certified copies of the two indictments so found, and, *upon the information and belief derived therefrom*, averred that the defendant had committed the crimes alleged in the District of Columbia. (Affidavit Relative to Indictments Nos. 26086 and 26087, fols. 691-716.)

There was no bench warrant issued from the District of Columbia attached to this affidavit and moving papers, *nor was there any statement whatever, in either of the affidavits of Mr. Dorr, that the defendants were wanted in the Washington jurisdiction.*

On June 24, 1908, John A. Shields, Esq., said Commissioner, issued two warrants upon the aforesaid removal complaints for the arrest of the defendant Peckham.

On June 24, 1908, the Marshal arrested the defendant Peckham and produced him before the Commissioner, at which time the accused demanded an examination and the proceedings were adjourned from time to time until November 30, 1908, at which date counsel for the Government made the following statement:

"Mr. Dorr: The Government withdraws "the complaint on removal filed against Fred- "erick A. Peckham on the 24th of June, 1908, "and asks that the warrant under same be dis- "missed.

"Motion granted.

"Mr. Rockwood: You now produce a new "warrant?

"The Commissioner: Yes.

"Mr. Rockwood: We demand an immediate "examination.

"Mr. Dorr: May I ask Judge Rockwood "whether he admits Mr. Peckham's identity "as the person named in the indictment men- "tioned in the complaint.

"Mr. Rockwood: Yes.

"Mr. Dorr: I offer in evidence an authenti- "cated copy of an indictment found in the "District of Columbia at the April term, 1908, "and appearing to have been filed in the Su- "preme Court of the District of Columbia on "May 29th, 1908, and numbered 26086.

"Mr. Rockwood: We object to it as in- "competent and immaterial. The indictment "does not allege an offense or crime against "the United States to have been committed by "the defendant Peckham, and it is therefore "not evidence in this proceeding of probable "cause; that it is not authenticated or certi- "fied as required by law; that there is no proof "before the Commissioner that Harry M. Clay-

"baugh is the Chief Justice of the Supreme
"Court of the District of Columbia, or that J.
"R. Young is the Clerk of said Court aside
"from the certificates of those parties them-
"selves; that the authentication is not suffi-
"cient to make the indictments evidence in
"this proceeding; that in so far as said indict-
"ment attempts to allege the violation of a
"regulation of the Department of Agricul-
"ture as the basis for a crime or offense that
"it is insufficient, as no crime can be pre-
"dicated upon such violation, the defendant
"being liable to indictment and arrest only
"for the commission of a statutory crime.

"Objection overruled. Exception.

"Indictment and authentication marked Ex
"hibit 1 of this date.

"Mr. Dorr: I offer in evidence authenticat-
"ed copy of an indictment found in the Su-
"preme Court of the District of Columbia at
"the April term, 1908, and filed in court on
"May 29th, 1908, and numbered 26087.

"Mr. Rockwood: We offer the same objec-
"tion to that indictment.

"Objection overruled. Exception.

"Marked Exhibit 2 of this date.

"Mr. Dorr: I offer in evidence authenticat-
"ed copies of two bench warrants issued from
"the Supreme Court of the District of Colum-
"bia on indictments Nos. 26086 and 26087 re-
"spectively, outstanding in said District of
"Columbia with the marshal's return endorsed
"thereon that the defendant Frederick A.
"Peckham, for whose apprehension they are
"issued is not to be found.

"Mr. Rockwood: We object to both of these
"bench warrants as incompetent and imma-
"terial and irrelevant and improper, and fur-
"ther for this specific reason: That these
"bench warrants in question appear to have
"been issued on the 2nd of November, 1908,
"and on that date the defendant Peckham
"had been previously arrested in removal pro-
"ceedings under the same indictments now
"offered in evidence by the Government, to
"wit: indictments Nos. 26086 and 26087, and

" was enlarged on bail and in the custody of
" his sureties in the Southern District of New
" York; that the proceeding in which he was
" arrested was not based upon the bench war-
" rants which are now offered in evidence, but
" was based solely upon the affidavits of G. H.
" Dorr, Esq., which affidavits were upon in-
" formation and belief, being the same pro-
" ceeding which the Government has just now
" previously to the institution of this proceed-
" ing moved to dismiss. That the bench war-
" rants in question were not issued for the de-
" fendant Peckham at the time of the institu-
" tion of the previous proceedings and are of
" no force in this proceeding because at the
" time of their issuance the said Frederick A.
" Peckham was in the custody of his bonds-
" man as aforesaid and under arrest.

"Objection overruled. Exception.

" Bench warrants marked Exhibits 3 and 4
" of this date.

" Mr. Dorr: The authentication is received
" as part of the exhibit?
" The Commissioner: Yes.

" Mr. Dorr: The Governments rests.

(See fols. 269-272 of Record.)

The removal complaint upon which this second arrest was founded is given at folios 239-268 of the Record, and it will be observed that the warrant for the second arrest issued while the first proceedings were pending and before they had been discontinued (see Warrant, fols. 235-236).

The hearing before the Commissioner upon the complaint of November 30, 1908, by which it was sought to remove the defendant Peckham to the District of Columbia for trial, was thereupon continued and the proceedings in full are given in the Record at folios 268-292 thereof. The parts thereof which the defendant Peckham claims were prejudicial to him will be referred to at length later on in this brief. The Commissioner

reserved decision and subsequently and on the 1st day of December, 1908, rendered his decision in writing, folios 721-722, in which he concluded:

> "After careful consideration of the testi-
> "mony submitted in this case I am of the opin-
> "ion that a case of probable cause has been
> "made out against the accused, and he is here-
> "by committed to the custody of the United
> "States Marshal for the Southern District of
> "New York until a warrant for his removal
> "shall issue by the U. S. District Judge, or
> "he shall be otherwise dealt with according to
> "law. The objections raised by counsel for the
> "accused I think are substantially decided by
> "me in the memoranda made by me in the case
> "of United States v. Haas.

The said Commissioner then issued his order and warrant directing:

> "The said Frederick A. Peckham is hereby
> "committed to the custody of the United
> "States Marshal for the Southern District of
> "New York until a warrant for his removal
> "shall issue by the U. S. District Judge, or he
> "shall be otherwise dealt with according to
> "law. (See Commitment, fols. 235-236).

The defendant Peckham was thereupon taken into custody by the United States Marshal and thereupon presented his petition to the United States Circuit Court for the Southern District of New York in which he prayed that a writ of *habeas corpus* issue directed to the Marshal, commanding him to produce the petitioner before the Court together with the cause of his imprisonment and detention, and also that a writ of *certiorari* issue directed to John A. Shields, Esq., United States Commissioner, in aid of the said writ of *habeas corpus*, requiring said Commis-

sioner to return and certify to the Court forthwith the cause of the imprisonment with true copies of all proceedings, etc. (See Petition and indictments, fols. 3-24).

Upon the presentation of said petition a writ of *habeas corpus* was issued by Honorable George C. Holt, United States Judge, directing the Marshal of the District to produce the defendant Peckham before the Circuit Court of the United States on the 4th day of December, 1908. Bail was fixed at Twenty-five Hundred Dollars, which the defendant subsequently gave and was released (fols. 1-2).

Judge Holt also issued a writ of certiorari directed to John A. Shields, Esq., United States Commissioner, commanding him to certify and return to the United States Circuit Court on the 4th day of December, 1908, the cause of the imprisonment of the defendant with copies of all proceedings (fols. 232-234).

On December 4, 1908, William Henkel, United States Marshal, filed his return to the writ of *habeas corpus*, wherein he recited that said Frederick A. Peckham was in his custody under and by virtue of a certain warrant of commitment dated the 2nd day of December, 1908, signed by John A. Shields, Esq., United States Commissioner in and for the Southern District of New York (see Return, fols. 222-225). The defendant Peckham thereupon filed a traverse and answer to the return of the Marshal, alleging in substance that his detention was illegal and void, and further:

> "First—Said Commissioner who issued said
> "warrant to said Marshal was without juris-

" diction to commit the defendant for removal
" to the District of Columbia for the reason
" that said defendant was under indictment in
" the Southern District of New York for pre-
" cisely the same offense charged against him
" by certain indictments found in the District
" of Columbia. Said defendant had been ap-
" prehended upon said New York indictments
" and admitted to bail; had demurred to the
" sufficiency of the indictments and said de-
" murrers had been overruled. He was there-
" fore legally in custody in the Southern Dis-
" trict of New York, awaiting trial for precise-
" ly the same offenses for which removal is now
" sought to the District of Columbia.

" The alleged crimes set forth in the certain
" indictments so found in the District of Col-
" umbia were and are barred by the Statute of
" Limitations.

" The said indictments do not charge the de-
" fendant with the commission of a statutory
" crime or offense and there was, therefore, an
" entire absence of probable cause before the
" Commissioner.

" Second. The said indictments relating to
" section 5451 of the Revised Statutes of the
" United States do not sufficiently charge a
" violation of that section.

" Third. The alleged crime of conspiracy to
" bribe attempted to be set forth in the indict-
" ments resulting in said warrant upon which
" defendant is held merge in the completed
" offense.

" Fourth. The proceedings before said Com-
" missioner resulting in the issuance of said
" warrant did not confer jurisdiction upon
" said Commissioner to commit the defendant
" for removal for the additional reason that
" the complaints upon which proceedings were
" instituted before said Commissioner were all
" upon information and belief and not upon
" the positive knowledge of affiant.

"Fifth. The defendant is deprived of his "liberty without due process of law and con- "trary to the provisions of the Constitution "of the United States; said Commissioner was "wholly without jurisdiction to issue said "warrants, and said Marshal is acting under "illegal warrants in attempting to hold and "detain said defendant and deprive him of "his liberty as aforesaid.

"Sixth. Said Commissioner who issued the "warrants upon which defendant is held was "also without jurisdiction to commit said de- "fendant for removal to the District of Col- "umbia for the additional reason that an order "for the removal of said defendant to the Dis- "trict of Columbia had been granted by Unit- "ed States Judge Ray from which order the "defendant had appealed and Judge Ray had "granted his stay of execution of said order "until the determination of said appeal. In "the meantime said defendant had been en- "larged on bail and was therefore legally in "custody for removal to the District of Col- "umbia at the time of the institution of the "proceedings resulting in the warrant issued "by Commissioner Shields. (See fols. 227- 229).

The United States Commissioner at the same time in obedience to a writ of *certiorari*, returned to the Court the record and proceedings of the case which had been had before him (fols. 234, et seq.)

Argument of the issues thus presented was had before Honorable Henry G. Ward, United States District Judge, and briefs submitted. Subsequently and on January 7, 1908, Judge Ward rendered his decision in which he held that indictment No. 26086, found in the District of Columbia, did not allege a crime, but that indictment No. 26087 sufficiently charged the defendants with the commission of an offense against the United States, for which reasons Judge Ward concluded, as follows:

> "Therefore, for the reasons stated in the "case of Haas v. Henkel, the writ is dis- "charged and the petitioner remanded. (See Opinion, fols. 722-725; also reported in Peckham v. Henkel, 166 Fed. Rep., 627).

This was followed by the entry of an order, signed by Judge Ward, as follows:

> "ORDERED, that said motion on said writ of "*habeas corpus* to discharge the said Fred- "erick A. Peckham be and it hereby is in all "respects denied, and that said Frederick A. "Peckham be and he hereby is remanded to "the custody and control of said William Hen- "kel, United States Marshal, for the Southern "District of New York. (Fols. 730-732).

Thereupon and on the 18th day of June, 1909, the defendant Frederick A. Peckham presented to the Circuit Court of the United States his petition for an order allowing him to appeal to the United States Supreme Court (see Petition, fols. 733-736). The Circuit Court allowed said appeal and granted an order staying all proceedings pending appeal, and directing that the defendant be released on bail to await the decision and determination of this appeal; the supersedeas bond being fixed at Twenty-five Hundred Dollars (fols. 736-737), which bond was duly given (fols. 744-747). The usual bond for costs in the sum of Two Hundred and Fifty Dollars was also given by the appellant (fols. 748-751). The citation on appeal was issued on the 18th day of January, 1909 (fols. 751-753), and notice duly served and filed. Assignment of errors were also presented and filed and will be hereinafter printed in full.

THE THREE WASHINGTON INDICTMENTS OF 1905.

As stated above, this matter has been pending in the courts since 1905. In that year three indictments were found in the District of Columbia and it is important that these indictments and the proceedings thereunder should be considered, as they bear upon the question of the bar of the Statute of Limitations hereafter discussed.

The Washington indictments of 1905 are practically based upon the same set of facts alleged in the later indictments of 1908. Briefly stated, they are as follows:

In the month of August, 1905, Edwin S. Holmes, Jr., Frederick A. Peckham and Moses Haas were indicted in the Supreme Court of the District of Columbia (indictment No. 24866), charged with having conspired to defraud the United States (see fols. 319 et seq.)

In the month of August, 1905, Edwin S. Holmes, Jr., Frederick A. Peckham and Moses Haas were indicted in the Supreme Court of the District of Columbia (indictment No. 24867), charged with having conspired to commit an offense against the United States (fols. 349- et seq.)

On October 2, 1905, Edwin S. Holmes, Jr., Frederick A. Peckham and Moses Haas were indicted in the Supreme Court of the District of Columbia (indictment No. 24907), charged with having conspired to commit an offense against the United States, and, in the second count thereof, with having conspired to defraud the United States (see fols. 378 et seq.)

The defendant Peckham was first arraigned before United States Commissioner Charles M.

Davison at Saratoga Springs, N. Y., upon a complaint filed with said Commissioner for his removal to the District of Columbia for trial. The said defendant waived examination, reserving the right to make certain objections at a later date, and gave bail for his appearance in the District of Columbia.

On the second day of October, 1905, the sureties upon his bail bond surrendered the defendant before said Commissioner, pursuant to the provisions of Section 1018 of the Revised Statutes of the United States, and the Commissioner thereupon exonerated the bail and issued a warrant re-committing the defendant (fols. 546-551). Thereupon the defendant Peckham, being in custody, applied to United States Judge Ray for a writ of *habeas corpus* which was issued, upon a petition setting forth all the facts and papers in the case, and alleging that the detention of the defendant was contrary to law and to the Constitution of the United States, and that the indictment upon which he was held did not constitute a crime (see fols. 559-561). Hearings were had before Judge Ray upon the return of the writ of *habeas corpus* and on January 10, 1906, Judge Ray dismissed the writ and remanded the defendant Peckham to the custody of the Marshal (see fols. 609-610). *At the same time, Judge Ray made an order for the removal of the defendant Peckham to the District of Columbia* (fols. 611-615). Immediate application was made by the defendant for leave to appeal to the Circuit Court of Appeals from this order, which leave was granted, Judge Ray endorsing upon the removal order the following:

"The defendant having taken an appeal
" from the within order of removal and such
" appeal having been allowed,
" ORDERED, that the execution of this order
" be stayed until the dismissal or determina-
" tion of such appeal.
" GEO. W. RAY,
" U. S. Judge. (fol. 615)

This appeal is now pending undetermined in the Circuit Court of Appeals for the Second Circuit and was so pending at the time of the institution of these removal proceedings.

While these proceedings in the Northern District of New York were going on, and before they had been completed before Judge Ray, the defendant Peckham was apprehended upon a warrant issued in the Southern District of New York by United States Commissioner Ridgway upon an indictment found in the District of Columbia for practically the same offense. The matter before Commissioner Ridgway was argued at length and briefs of counsel submitted. Thereafter and on the 29th day of October, 1905, *and at the same time that the proceedings before Judge Ray were pending and before their completion*, Commissioner Ridgway rendered his decision in substance holding that the indictments failed to charge a crime or offense, and he thereupon discharged the defendant Peckham as well as the defendant Haas, who had been arrested at the same time. (See Opinion of Commissioner Ridgway, fols. 442-462).

Not content with this conclusion, as far as the defendant Haas was concerned, the Government again applied to Honorable George C. Holt, United States Judge for the Southern District of New York, for a warrant for the arrest and

examination of the defendant Haas upon Indictment No. 24907, being the third Washington indictment above mentioned. The defendant Haas was arrested upon this warrant on the 10th day of April, 1906, and brought before Judge Holt, who, after elaborate argument, wrote his opinion to the effect that the indictments did not charge a crime and discharged the defendant. (See Opinion of Judge Holt, in United States v. Haas, 167 Fed. Rep., 211).

The defendant Peckham has, therefore, been discharged by Commissioner Ridgway and held for removal by Judge Ray. The defendant Haas has been discharged both by Commissioner Ridgway and Judge Holt.

The appeal of the defendant Peckham to the Circuit Court of Appeals was perfected and proceeded with, and there were no new developments in the case until on the 29th day of May, 1908, when two indictments, as aforesaid, were found against the defendant Peckham by a grand jury in the Southern District of New York, and two indictments for identical offenses were filed against him in the Supreme Court of the District of Columbia upon which removal is now sought. In another portion of this brief we shall discuss these indictments in detail.

The errors assigned by the appellant Peckham on this appeal are as follows:

THE ASSIGNMENT OF ERRORS.

"Comes now the petitioner, Frederick A. "Peckham and files the following Assignment "of Errors upon which he will rely upon his "prosecution of the appeal from the final "order made in the Circuit Court of the United States for the Southern District of New "York on the 18th day of January, 1909, in "the above entitled cause, dismissing the writs

"of habeas corpus and certiorari and re-
"manding your petitioner to the custody of
"the United States Marshal:

".1 That the said Court erred in dismissing
"the petitioner's writs of habeas corpus and
"certiorari and in remanding him to the cus-
"tody of the Marshal.

"2. That the said Court erred in refusing
"the discharge of said petitioner.

"3. That the said Court erred in holding
"that the restraint of the petitioner's liberty
"is legal.

"4. That the said Court erred in holding
"that the restraint of the petitioner is not a
"violation of his constitutional rights, under
"the Constitution of the United States.

"5. That the said Court erred in holding
"that the alleged indictments in the said rec-
"ord contained, or either of them, set forth a
"crime or offense against the laws of the Unit-
"ed States.

"6. That the said Court erred in holding
"and deciding that any of the counts of the in-
"dictments charged a conspiracy to defraud
"the United States within the meaning of sec-
"tion 5440 of the Revised Statutes.

"7. That the said Court erred in holding
"and deciding that any of the counts of any
"of the indictments charged a conspiracy to
"commit the offense against the United States
"defined by section 5451 of the Revised Stat-
"utes.

"8. That the said Court erred in holding
"that any of the indictments charged the of-
"fenses of bribery.

"9. That the said Court erred in holding
"that any of the indictments charged the of-

" fense of conspiring to promise, offer and give
" to an officer of the United States and a per-
" son acting for and in behalf of the United
" States in an official function, under and by
" virtue of a certain department and office of
" the Government, a sum of money to induce
" him to do acts in violation of his lawful duty.

" 10. That the said Court erred in holding
" that the said alleged indictments, or either
" of them, were properly admitted in evidence
" before the Honorable Commissioner to prove
" that there was probable cause to believe that
" your petitioner was guilty of a crime or of-
" fense against the laws of the United States.

" 11. That the said Court erred in declining
" to hold and decide that the said Commis-
" sioner was without jurisdiction to commit
" your petitioner for removal to the District
" of Columbia, for the reason that said peti-
" tioner was under indictment in the Southern
" District of New York for the same offenses
" charged against him by the indictments
" found in the District of Columbia, as dis-
" closed by the record herein; it appearing
" that your petitioner had been apprehended
" upon said New York indictments and had
" been admitted to bail; that he had demurred
" to the sufficiency of the indictments and that
" said demurrers had been overruled.

" 12. That the said Court erred in declining
" to find and decide that your petitioner was
" legally in custody in the Southern District
" of New York, pursuant to indictments found
" in said District, awaiting trial for the same
" offenses for which proceedings were institut-
" ed before said Commissioner to effect the
" removal of your petitioner to the District of
" Columbia.

" 13. That the said Court erred in declin-
" ing to hold and decide that the alleged crimes
" set forth in the four indictments found in the
" District of Columbia are, and each of them
" is barred by the Statute of Limitations.

"14. That the said Court erred in declining "to hold and decide that Holmes was not an "officer of the United States within the meaning of that term, as used in Section 5451 and "all the other sections of the Revised Statutes "of the United States pertinent to the charges "attempted to be set forth.

"15. That the said Court erred in holding "that the sufficiency of the indictment is to be "determined by the Court in which it was "found, to-wit, the Supreme Court of the District of Columbia, and is not a matter of "inquiry in removal proceedings.

"16. That the said Court erred in declining to hold and decide that the indictments "relating to section 5451 of the Revised Statutes do not sufficiently charge the violation "of that Section.

"17. That the said Court erred in declining to hold and decide that no count of any "of the indictments sufficiently charges any "offense against the United States, and that "since the application for removal is based on "the indictments alone, and no evidence was "offered to sustain them, that the Commissioner was not vested with jurisdiction to "commit your petitioner for removal.

"18. That the Court erred in declining to "hold and decide that the alleged crime of "conspiracy to bribe did not merge in the "completed offense.

"19. That the said Court erred in declining "to hold and decide that the preliminary complaint, upon which the warrant was issued "against your petitioner, was insufficient, it "appearing that the same was upon information and belief, and not upon the positive "knowledge of the affiant; and also that a "bench warrant from the District of Columbia was not filed with the said complaint at "the time that said warrant was issued.

"20. That the said Court erred in declining "to hold and decide that the previous decision "of United States Judge Holt, discharging "the defendant Haas, was technically res "adjudicata, and should be held to be conclus- "ive upon the questions involved before said "Court.

"21. That the said Court erred in refusing "and denying the application and motion of "your petitioner to have certain testimony "and photographic exhibits relating to indict- "ment No. 26088 made a part of the record "before said Court of the United States in "this proceeding.

"22. That the said Court erred in declining "to hold and decide that no one of the papers "admitted in evidence as indictments had any "legal inception.

"23. That the said Court erred in holding "and deciding that any one of the papers ad- "mitted in evidence as indictments was "proved to be a valid or legal indictment, and "that any one of the said papers furnished "any evidence or probable cause to believe "the petitioner guilty of a crime, or was ad- "missible in evidence in the proceeding.

"24. That the said Court erred in not hold- "ing and deciding that your petitioner is un- "lawfully restrained of his liberty.

"25. That the said Court erred in not hold- "ing and deciding that your petitioner is de- "prived of his liberty without due process of "law within the meaning of the Fifth Amend- "ment to the Constitution of the United "States.

"26. That the said Court erred in holding "that the commitment issued by the said Com- "missioner was not without legal authority or "jurisdiction of any kind, and was not utterly "void and ineffectual, and that the petitioner's "detention and imprisonment thereunder was

" not in violation of the Constitution of the " United States and in violation of his privil- " eges and immunities thereunder.

" 27. That the said Court erred in declin- " ing to hold and decide that your petitioner's " detention was in violation of Article V of the " Amendments to the Constitution of the Unit- " ed States, in that the said United States " Commissioner had no jurisdiction to order " the arrest and commitment of your petition- " er, and in that your petitioner is held to " answer for a crime without any sufficient " or valid indictment of a grand jury.

"28. That the said Court erred in declining " to hold and decide that the restraint of your " petitioner is in violation of Article IV of the " Amendments to the Constitution of the Unit- " ed States, because it appears from the indict- " ment upon which the warrant in this case " was issued that it was wholly void.

"29. That the said Court erred in failing to " hold and decide that the restraint of your " petitioner is in violation of the provisions of " Article VI of the Amendments to the Consti- " tution of the United States, for the reason " that upon the proof before the Commisson- " er and before the said court it was shown " that the offenses charged in the indictment " were not committed in the District of Col- " umbia, p. 30. That the said Court erred in " declining to hold and decide that the United " States Commissioner was without jurisdic- " tion to commit the defendant Peckham " for removal to the District of Colum- " bia for the reason that an order for " the removal of said defendant to the District " of Columbia had been previously granted by " United States Judge Ray in the Northern " District of New York, from which order the " defendant Peckham had appealed and said " Judge Ray had granted a writ and stay of " execution of said order until the determina- " tion of said appeal; in the meantime said de-

" fendant had been enlarged on bail and said
" Court further erred in declining to hold and
" decide that said Peckham, by virtue of said
" proceedings, was legally in custody for re-
" moval to the District of Columbia at the
" time of the institution of these proceedings
" before United States Commissioner Shields.

" 31. That the said Court committed other
" errors appearing on the record.

" Wherefore, your petitioner prays that the
" order dismissing the said Writs of Habeas
" Corpus and Certiorari and remanding your
" petitioner to the custody of the United States
" Marshal be reversed and that your petitioner
" be discharged from custody.
" (Signed) Frederick A. Peckham,
" Petitioner.
" Nash Rockwood,
" Max D. Steuer,
" Attorneys for Petitioner.

INDEX TO THE ARGUMENT

POINTS.

I.

This Court has jurisdiction of this appeal (see page 35).

II.

It was error to hold the defendant for removal to the District of Columbia for trial. Indictments charging similar offenses to have been committed in the State of New York had been previously found against him in the Southern District of New York, upon which he was at that time enlarged on bail awaiting trial after having demurred

to the indictments. His application by habeas corpus to be discharged from custody should have been granted, as he has a constitutional right in this case to be tried, if at all, in the Southern District of New York (see page 35).

III.

The indictments did not confer jurisdiction upon the Commissioner to commit the defendant for removal to the District of Columbia and there was an entire absence of probable cause, for the reason that the indictments do not allege an illegal conspiracy to commit an offense against the United States (see page 35).

IV.

The indictments did not confer jurisdiction upon the Commissioner to commit the defendant for removal to the District of Columbia, and there was an absence of probable cause for the additional reason that the indictments do not allege an illegal conspiracy "to defraud the United States in any manner or for any purpose" (see page 36).

V.

Indictments Nos. 26086 and 26087, involving the defendant Peckham, do not charge him with having conspired to cause the reports to be made untrue and inaccurate (see page 36).

VI.

The Commissioner was without jurisdiction to commit the defendant Peckham for removal to the District of Columbia for the further reason that an order for the removal of said defendant to the District of Columbia had been granted by United States Judge Ray, from which order the defendant had appealed and Judge Ray had granted a stay of the execution of said order until the determination of said appeal; in the meantime, said defendant has been enlarged on bail *and was, therefore, legally in custody for removal to the District of Columbia at the time of the institution of these proceedings before Commissioner Shields.* (See page 37)

VII.

It is not a crime or offense to violate a custom, practice, or regulation of the head of a department of the Government unless such custom, practice or regulation has been authorized by statute and its violation made penal by some general or special law which is not the fact in this case. (See page 42).

VIII.

Indictment No. 26087 is further fatally defective in that it does not allege that the defendants were persons not authorized to receive the information from Holmes (see page 42).

IX.

Holmes was not an officer of the United States or a person acting for or on behalf of the United States in an official function under or by virtue of any department or office of the government thereof. There was no question, matter, cause or proceeding at any time pending in connection with the cotton-crop reports which could by law be brought before him in an official capacity or upon which his decision or acton could be influenced. Holmes was not charged with any duty whatever in connection with reports upon the cotton crop. (See page 42).

X.

If Holmes was a public officer, as claimed by the Government, the indictments in which he is joined as a defendant are fatally defective because Holmes could not conspire with himself to bribe himself or to influence himself or to induce himself to commit the alleged offense of misconduct in office. (See page 42).

XI.

The removal complaints filed with the United States Commissioner did not confer jurisdiction upon him to hold or commit the defendant for removal, as there was no proof that the defendant was wanted in the District of Columbia, the bench warrants offered in evidence having been procured in an attempt to amend or correct the defect of jurisdiction caused by their absence when the original complaint was filed. Removal proceedings

must be based upon the fact that the accused is wanted in the demanding jurisdiction and the absence of such proof is a jurisdictional defect. (See page 43).

XII.

The crimes and offenses attempted to be alleged in the Washington and New York indictments of 1908 were all barred by the Statute of Limitations. (See page 46).

XIII.

The alleged crime of conspiracy to bribe merged in the completed offense. (See page 46).

XIV.

There was an entire absence of probable cause before the commissioner and he was without jurisdiction to commit the defendant for removal to the District of Columbia, because none of the indictments sufficiently charged the defendant with having committed any crime or offense against the United States within the purview of Section 5440 R. S (See page 47).

XV.

In conclusion. (See page 51).

ARGUMENT.

POINTS.

I.

This Court has jurisdiction of this appeal.

(The argument in the brief submitted for the defendant Moses Haas is applicable here, and is hereby referred to. (See Point I of Haas Brief).

II.

It was error to hold the defendant for removal to the District of Columbia for trial. Indictments, charging similar offenses to have been committed in the State of New York, had been previously found against him in the Southern District of New York upon which he was at that time enlarged on bail, awaiting trial, after having demurred to the indictments. His application by habeas corpus to be discharged from custody should have been granted as he has a constitutional right in this case to be tried, if at all, in the Southern District of New York.

(The argument in the brief submitted for the defendant Moses Haas is applicable here, and is hereby referred to. (See Point II of Haas Brief).

III.

The indictments did not confer jurisdiction upon the Commissioner to commit the defendant for removal to the District of Columbia, and there was an

entire absence of probable cause for the reason that the indictments do not allege an illegal conspiracy to commit an offense against the United States.

(The argument in the brief submitted for the defendant Moses Haas is applicable here, and is hereby referred to. (See Point III of Haas Brief).

IV.

The indictments did not confer jurisdiction upon the Commissioner to commit the defendant for removal to the District of Columbia, and there was an absence of probable cause for the additional reason that the indictments do not allege an illegal conspiracy "to defraud the United States in any manner or for any purpose."

(The argument in the brief submitted for the defendant Moses Haas is applicable here, and is hereby referred to. (See Point IV of Haas Brief).

V.

Indictments Nos. 26086 and 26087, involving the defendant Peckham, do not charge him with having conspired to cause the reports to be made untrue and inaccurate.

In indictments No. 26088 and 26089 the defendant Haas was charged with having conspired to cause the defendant Holmes to make the reports untrue and inaccurate. This charge is not made against

the defendant Peckham in indictments Nos. 26086 and 26087 which concern him. The sole charge against the defendant Peckham is that he conspired to procure information concerning the cotton crop report of June, 1905, to be given out by Holmes in advance. Therefore, the argument of Point V of the Haas brief has no application to the indictments against the defendant Peckham.

VI.

The Commissioner was without jurisdiction to commit the defendant Peckham for removal to the District of Columbia for the further reason that an order for the removal of said defendant to the District of Columbia had been granted by United States Judge Ray, from which order the defendant had appealed and Judge Ray had granted a stay of the execution of said order until the determination of said appeal; in the meantime, said defendant has been enlarged on bail and was, therefore, legally in custody for removal to the District of Columbia at the time of the institution of these proceedings before Commissioner Shields.

As hereinbefore stated, the defendant Peckham was indicted in August, 1905, by a federal grand jury in the District of Columbia in connection with Edwin S. Holmes, Jr., and Moses Haas, charged with having violated the provisions of Section 5440 of the Revised Statutes. A warrant for his arrest was issued by United States Commissioner Davison in the Northern District of New York,

and the procedure hereinbefore detailed took place (the indictment upon which he was first apprehended being No. 24866). Upon being held by the Commissioner such proceedings were had that the defendant Peckham subsequently applied to United States Judge Ray for a writ of *habeas corpus*, which was granted and the matter was argued at length before Judge Ray in the Northern District of New York.

On the 10th day of January, 1906, Judge Ray dismissed the writ of *habeas corpus* and remanded the defendant to the Marshal, at the same time granting an order of removal. Immediately the defendant Peckham petitioned the court to be allowed to appeal to the United States Circuit Court of Appeals for the Second Circuit, which petition was granted and the defendant enlarged on bail pending the argument of the same.

Judge Ray endorsed upon the warrant of removal:

> "The defendant having taken an appeal
> "from the within order of removal, and such
> "appeal having been allowed, ordered that
> "the execution of this order be stayed until
> "the dismissal or determination of such ap-
> "peal.
> "
> "GEORGE W. RAY.
> "U. S. Judge.

The appeal was perfected and is now pending undetermined in the United States Circuit Court of Appeals.

Therefore, at the time of the institution of these proceedings the defendant Peckham was actually enlarged on bail in the custody of his sureties for removal to the District of Columbia upon an indictment in substance charging the same offense for which removal to the same District is now sought.

In theory of law, the defendant is removed to the Washington jurisdiction, and the Commissioner was without jurisdiction to grant another order for his removal to the same district. The propositions herein involved were discussed to some extent in *In re* Beavers, 125 Fed. Rep., 988, where it was held by Judge Holt, as follows:

> "In my opinion, the fact that Beavers had "given bail on the first arrest and was not "in the actual custody of the Marshal when "the second arrest took place, is immaterial. "The general rule is as stated by Mr. Justice "Swayne in Taylor v. Taintor, 16 Wall, 371, "21 L. Ed. 287:
>
> "'When bail is given, the principal is re-"'garded as delivered to the custody of his "'sureties. Their dominion is a continuance "'of the original imprisonment.'
>
> "The question, therefore, in my opinion, is "precisely the same as though the marshal, "while holding the petitioner under the "original warrant of the commissioner pend-"ing the examination as to whether he should "be removed to the Eastern District of New "York, had received the warrant of the Com-"missioner issued on the indictment found in "the District of Columbia. I think that in "such a case, although the issue of the war-"rant was proper, it would be the duty of the "Marshal not to execute it, but to hold it pend-"ing the decision of the Commissioner in the "proceeding for the removal of the defendant "from this district to the Eastern District of "New York. If, for any reason, the Commis-"sioner should decide in the first proceeding "that the petitioner should not be removed, "then it would be the duty of the Marshal to "arrest him and hold him under the warrant "in the second proceeding; but, until the first "proceeding is determined, I think that no "other arrest can be permitted. As is stated "in Taylor v. Taintor, 16 Wall, 370, 21 L. Ed. "287:
>
> "'It is a principle of universal juris-"'prudence that, where jurisdiction has at-

> " ' tached to person or thing, it is—unless
> " ' there is some provision to the contrary—
> " ' exclusive in effect until it has wrought its
> " ' function.'
>
> "If it was the duty of the Marshal to arrest
> "him under the second warrant, it would be
> "his duty to carry out the decision on the sec-
> "ond warrant, as it is his duty to carry out
> "the decision on the first warrant. If the two
> "proceedings resulted in an order for the re-
> "moval of the defendant in one case to the
> "Eastern District of New York for trial, and
> "in the other case to the District of Columbia
> "for trial, it is obvious that no such orders
> "could be complied with at the same time. The
> "only possible rule is that a Court which has
> "in its custody a person charged with a crime
> "has exclusive custody and jurisdiction until
> "the question of his guilt or innocence is de-
> "termined, and, if he is found guilty, until
> "the period of imprisonment has expired.
> "Taylor v. Taintor, 16 Wall. 366, 21 L. Ed.
> "287; Matter of Troutman, 24 N. J. Law, 634;
> "Matter of Briscoe, 51 How. Prac., 422.
>
> "My conclusion is that the arrest under the
> "second warrant issued by the Commissioner
> "should be vacated.

The petitioner Peckham is legally in the custody of his surety, and in theory of law is actually in the jurisdiction to which removal is sought. If it should be held in the appeal to the Circuit Court of Appeals that the order of removal granted by Judge Ray was improvidently granted and the defendant should be discharged, then this application might be made; but while the other proceeding is pending and the former removal order outstanding, it cannot be proper to harass a defendant with repeated attempts to remove him to the same district for the same offense.

In Beavers v. Haubert, 198 U. S., 77, the Court held:

> "The rule, that where jurisdiction has at-
> "tached to a person or thing it is exclusive in
> "effect until it has wrought its function, is
> "primarily the right of the court or sover-
> "eignty itself.

If the order of Commissioner Shields is to become effective then the stay granted by Judge Ray is immediately made void, and the order of the court or sovereignty is nullified. *A United States Commissioner is without jurisdiction to invalidate the stay of a United States Judge, either directly or indirectly.* The defendant Peckham has a legal right under the stay granted by Judge Ray, if for no other reason, to remain at large in the custody of his bail until his appeal is determined, and the Commissioner was without jurisdiction to commit him.

Judge Ward in deciding this point in Peckham v. Henkel, 166 Fed. Rep., 627, wrote:

> "Finally it is said that the petitioner should
> "not be removed for trial to the District of
> "Columbia because of the indictments that
> "have been found against him in the Southern
> "District of New York, but this is a right, not
> "of the petitioner, but of the Court, and may
> "be waived.

Beavers v. Haubert, 198 U. S., 77.

The error of this decision lies in the fact that Judge Ray had granted a stay and that, even conceding the right to be one which Judge Ray could waive or consent to, the fact still remains that he had not in any way modified the stay nor had he been applied to for that purpose. If the defendant Peckham shall be removed to Washington upon the order of removal in this case, it most effectually nullifies the stay granted by Judge

Ray. We submit that the status of Peckham should remain as it is until the Circuit Court of Appeals has decided his appeal.

VII.

It is not a crime or offense to violate a custom, practice or regulation of the head of a department of the Government unless such custom, practice or regulation has been authorized by statute and its violation made penal by some general or special law, which is not the fact in this case.

(The argument in the brief submitted for the defendant Moses Haas is applicable here and is hereby referred to. See Haas Brief, Point VII.)

VIII.

Indictment No. 26,087 is further fatally defective in that it does not allege that the defendants were persons not authorized to receive the information from Holmes.

(The argument in the brief submitted for the defendant Moses Haas is applicable here and is hereby referred to. See Haas Brief, Point VIII.)

IX.

Holmes was not an officer of the United States or a person acting for or on behalf of the United States in an official function under or by virtue of any department

or office of the government thereof. There was no question, matter, cause or proceeding at any time pending in connection with the cotton crop reports, which could by law be brought before him in an official capacity, or upon which his decision or action could be influenced. Holmes was not charged with any duty whatever in connection with reports upon the cotton crop.

(The argument in the brief submitted for the defendant Moses Haas is applicable here and is hereby referred to. See Haas Brief, Point IX.)

X.

If Holmes was a public officer, as claimed by the Government, the indictments in which he is joined as a defendant are fatally defective, because Holmes could not conspire with himself to bribe himself or to influence himself or to induce himself to commit the alleged offense of misconduct in office.

(The argument in the brief submitted for the defendant Moses Haas is applicable here and is hereby referred to. See Haas Brief, Point X.)

XI.

The removal complaints filed with the United States Commissioner did not confer jurisdiction upon him to hold or commit the defendant for removal, as there was no proof that defendant was

wanted in the District of Columbia, the bench warrants offered in evidence having been procured in an attempt to amend or correct the defect of jurisdiction caused by their absence when the original complaint was filed. Removal proceedings must be based upon the fact that the accused is wanted in the demanding jurisdiction and the absence of such proof is a jurisdictional defect.

When the complaint to remove the defendant Peckham to the District of Columbia was filed, no bench warrants were attached to the moving papers, nor was there any statement that the defendant Peckham was wanted in that jurisdiction. This was a fatal defect and all of the argument upon the subject, as stated in Point XI of the brief filed in behalf of the defendant Haas, is applicable here. Counsel for the Government, however, undoubtedly appreciating the importance of the point, withdrew the original complaint of removal and asked that the original warrant be dismissed (see fols. 268-269). Thereupon a new warrant was produced and the Government subsequently offered in evidence authenticated copies of two bench warrants issued from the Supreme Court of the District of Columbia on indictments Nos. 26086 and 26087, respectively, with the Marshal's return endorsed thereon that the defendant Frederick A. Peckham, for whose apprehension they had been issued, could not be found. An examination of these bench warrants (fols. 317-319) discloses, however, that they were issued on the 2nd day of November, 1908, *and while the original proceeding before Commissioner Shields was pending.* The proceeding before Com-

missioner Shields was not withdrawn until November 30, 1908; so that this original proceeding was initiated without a bench warrant and the bench warrants issued on November 2, 1908, were clearly intended to be used in that proceeding in order to correct or amend the defect, as was done in the Haas case.

We submit that when the Commissioner permitted the withdrawal of the original complaint on removal that these bench warrants fell with it, rendering the whole proceedings jurisdictionally defective.

It will be further noted that Mr. Dorr in his second removal complaint (fols. 239-244) does not aver that bench warrants had been issued in the District of Columbia or that the defendant Haas was wanted in that jurisdiction.

It was error for the Commissioner to make these bench warrants a part of the second or substituted proceeding. Counsel for the defendant made due objection to the receipt of these bench warrants in evidence, as follows:

> "Mr. Rockwood: We object to both of "these bench warrants as incompetent and im- "material and irrelevant and improper, and "further for this specific reason: That these "bench warrants in question appear to have "been issued on the 2nd of November, 1908, "and on that date the defendant Peckham had "been previously arrested in removal proceed- "ings under the same indictments now offered "in evidence by the Government, to-wit, in- "dictment No. 26086 and 26087, and was en- "larged on bail and in the custody of his "sureties in the Southern District of New "York; that the proceeding in which he was "arrested was not based upon the bench war- "rants which are now offered in evidence, but "was based solely upon the affidavits of G. H. "Dorr, Esq., which affidavits were upon in-

" formation and belief, being the same proceed-
" ing which the Government has just now pre-
" viously to the institution of this proceeding
" moved to dismiss. That the bench warrants
" in question were not issued for the defendant
" Peckham at the time of the institution of the
" previous proceedings and are of no force in
" this proceeding because at the time of their
" issuance the said Frederick A. Peckham was
" in the custody of his bondsman as aforesaid
" and under arrest.

The objection was overruled, to which an exception was duly taken.

Bench warrants not having been issued when the defendant was originally apprehended, and there being no proof by affidavit that he was wanted in the District of Columbia, and the bench warrants being issued while the original proceeding was pending, there was clearly a defect of jurisdiction, and the Commissioner had no right to commit the defendant.

XII.

The crimes and offenses attempted to be alleged in the Washington and New York indictments of 1908 were all barred by the Statute of Limitations.

(The argument in the brief submitted for the defendant Moses Haas is applicable here and is hereby referred to. See Haas Brief, Point XII.)

XIII.

The alleged crime of conspiracy to bribe merged in the completed offense.

(The argument in the brief submitted for the defendant Moses Haas is applicable here and is hereby referred to. See Haas Brief, Point XIII.)

XIV.

There was an entire absence of probable cause before the Commissioner, and he was without jurisdiction to commit the defendants for removal to the District of Columbia, because none of the indictments sufficiently charged the defendant with having committed any crime or offense against the United States, within the purview of Section 5440 R. S.

As before stated, two indictments were found against the defendant Peckham in the District of Columbia upon which this proceeding is based. Each indictment contains one count and they will be considered in their order.

INDICTMENT NO. 26086.

In this indictment it is alleged that:

> "Moses Haas, Edwin S. Holmes, Junior, and "Frederick A. Peckham, each late of the Dis- "trict of Columbia, on the thirty-first day of "May, in the year of our Lord one thousand "nine hundred and five, at and within the said "District of Columbia unlawfully did know- "ly conspire, combine, confederate and agree "together, and with one Lewis C. Van Riper, "who is not made a defendant herein, to de- "fraud the United States of and concerning "its governmental function in the matter of "issuing and publishing the cotton-crop re- "port to be issued and published by the said "department and bureau in the then next suc- "ceeding month of June, and of its right to "administer an intelligent and honest service "in that behalf in the interests of the people "of the United States, to be accomplished by "the means and methods and under the cir-

"cumstances and conditions now here set forth
"and described; that is to say:

In that the said Holmes was to give out information in advance concerning the report upon the cotton crop for the month of June, 1905.

Judge Ward held that this indictment did not charge the defendants with a crime. (See Haas v. Henkel, 166 Fed. Rep., 621). We will, nevertheless, discuss it and submit that it was properly held to be defective for the following reasons:

1. It does not allege an illegal conspiracy "to defraud the United States in any manner or for any purpose." (See Point IV of this brief.)

2. It is not a crime or offense to violate a custom, practice or regulation of the head of a department of the Government, unless such custom, practice, or regulation has been authorized by statute, and its violation made penal by some general or special law. (See Point VII of this brief.)

3. Holmes was not an officer of the United States. (See Point IX of this brief.)

4. Holmes was not a person acting for or on behalf of the United States in an official function under or by virtue of any department or office of the Government thereof. (See Point IX of this Brief).

5. There was no question, matter, cause, or proceeding at any time pending in connection with the cotton crop reports which could by law be brought before Holmes in an official capacity, or upon which his decision or action could be influenced. (See Point IX of this Brief).

6. Holmes was not charged with any duty whatever in connection with reports upon the cotton crop. (See Point IX of this Brief).

7. If Holmes was a public officer, as claimed by the Government, this indictment in which he is joined as a defendant is fatally defective, because Holmes could not conspire with himself to bribe himself or to influence himself or to induce himself to commit the alleged offense of misconduct in office. (See Point X of this Brief).

8. The crime attempted to be stated in this indictment was barred by the Statute of Limitations. (See Point XII of this Brief).

9. The alleged crime of conspiracy to bribe merged in the completed offense. (See Point XIII of this Brief).

INDICTMENT NO. 26087.

1. This indictment charges

"That on the thirty-first day of May, in the "year nineteen hundred and five, at the Dis- "trict of Columbia aforesaid, said Moses Haas "and said Frederick A. Peckham unlawfully "did conspire, combine, confederate and agree "together with said Lewis C. Van Riper, who "is not made a defendant herein, to commit "an offense against the United States; that "is to say, the offense of promising, offering "and giving to an officer of the United States, "and a person acting for and on behalf of the "United States in an official function under "and by virtue of a certain department and "office of the Government thereof; that is to "say, to the said Edwin S. Holmes, Junior, "associate statistician of the said Bureau of "Statistics as aforesaid, a sum of money, the "amount of which is to the grand jurors afore- "said unknown, to induce him, the said Edwin "S. Holmes, Junior, to do certain acts in vio- "lation of his lawful duty, that is to say, to "induce him, the said Edwin S. Holmes, Jun- "ior, unlawfully and in violation of the said "duty of him, the said Edwin S. Holmes, Jun- "ior, as such associate statistician honestly and "carefully to keep secret all statistics and sta- "tistical matter and information, knowledge

"of which was acquired by him as aforesaid,
" as such associate statistician, and in advance
" of the official issue and publication of the
" said cotton crop report, which was to be
" issued as hereinbefore set forth, in the month
" of June next ensuing, and in advance of the
" time when the matter and information con-
" tained in such cotton crop report could law-
" fully be made public, to furnish, in so far as
" in him the power lay, to the said Moses Haas
" and the said Frederick A. Peckham and the
" said Lewis C. Van Riper, the statistics, mat-
" ter and information which were to be con-
" tained in said report, knowledge of which
" was, as aforesaid, acquired by the said Edwin
" S. Holmes, Junior, in the performance of his
" duty as such associate statistician.

It is defective for the following reasons:

1. It does not allege an illegal conspiracy to commit an offense against the United States. (See Point III of this Brief).

2. It is not a crime or offense to violate a custom, practice or regulation of the head of a department of the Government unless such custom, practice or regulation has been authorized by statute, and its violation made penal by some general or special law. (See Point VII of this Brief).

3. This indictment is further fatally defective in that it does not allege that the defendants were persons not authorized to receive the information from Holmes. (See Point VIII of this Brief).

4. Holmes was not an officer of the United States. (See Point IX of this Brief).

5. Holmes was not a person acting for or on behalf of the United States in an official function. (See Point IX of this Brief).

6. There was no question, matter, cause or proceeding at any time pending in connection with the cotton crop reports which could by law be brought

before Holmes in an official capacity, and upon which his decision or action could be influenced. (See Point IX of this Brief).

7. Holmes was not charged with any duty whatever in connection with reports upon the cotton crop. (See Point IX).

8. The crime attempted to be alleged in this indictment was barred by the statute of limitations. (See Point XII).

XV.

In conclusion.

The argument in the brief submitted for the defendant Moses Haas is applicable here and is hereby referred to. (See Point XVII of Haas Brief).

The order dismissing the writ of *habeas corpus* should be reversed and the defendant discharged.

December 1st, 1909.

Respectfully submitted.

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JAN 12 1910

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1909.

No. 366.

FREDERICK A. PECKHAM, APPELLANT,

vs.

WILLIAM HENKEL, MARSHAL, ETC.

No. 367.

MOSES HAAS, APPELLANT,

vs.

WILLIAM HENKEL, MARSHAL, ETC.

Supplemental Brief in Behalf of the Appellants.

NASH ROCKWOOD,
HENRY E. DAVIS,
For the Appellants.

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WILLIAM HENKEL, MARSHAL, ETC.

Supplemental Brief in Behalf of the Appellants.

In accordance with the permission of the court in that behalf, the following considerations are respectfully submitted to be taken in connection with, and as supplemental to, the brief heretofore filed and the argument at bar in behalf of the appellants.

In view of the fullness of the main brief and the scope of the argument, the following matters only are treated:

1. The charges of the fifth and seventh counts of Washington indictment, No. 26,088, in connection with

the matters therein set forth and charged also in the corresponding New York indictment;

2. The application of section 1014, Rev. Stats. of the United States; and

3. The supposed sufficiency of the charges of defrauding the United States.

I.

On the hearing, the Government ultimately rested its claim to have the appellants removed to the District of Columbia upon the contention that the fifth and seventh counts of the Washington indictment, No. 26,088, charge conspiracies not included in the New York indictments. There is no merit in this contention.

The fifth count of the Washington indictment in question (Rec., in No. 367, pp. 233, 236) charges a conspiracy among Haas, Price and Holmes that, in violation of his duty honestly and carefully to guard and keep secret all statistics and statistical matter and information, knowledge of which was acquired by him in his official position, etc., Holmes should and would furnish to Haas and Price the statistics and matter and information which were to be contained in each of the cotton crop reports, knowledge of which was, or would be, acquired by him, Holmes, in the performance of his duty (p. 234, fol. 315). The rest of the count, before the narration of the overt acts, mentions the alleged use to which the revealed information was to be put, matter obviously unimportant and immaterial in determining the character and scope of the conspiracy alleged.

The second New York indictment set forth in the record (*Id.* 386, 393), in the first count (p. 390, fol. 648), charges the same persons with a conspiracy to commit the offense against the United States of promising Holmes a sum of money to induce him to give out in

advance the statistics and matter and information aforesaid by furnishing the same to Haas and Price, as aforesaid.

Either these two portions of the two indictments charge the same offense in substance, or the Washington indictment, in the particular under consideration, charges no offense. Judge Ward, in his opinion (Rec., p. 473, fol. 831), distinctly holds the latter; but whether or not he was right in so holding, the fact clearly is that each of the two portions of the indictments under consideration in effect charges the same offense, namely, that of inducing Holmes to give out in advance the matter and information referred to: It is wholly unimportant that one indictment charges the offense in general, and that the other specifies the manner of inducement, namely, the promising to pay for the information.

The seventh count of the Washington indictment under consideration charges the same parties with a conspiracy that, in violation of his duty to assist in preparing the cotton crop reports truly and accurately, Holmes was to cause and procure the June, 1905, report to be untrue and inaccurate by causing the report to state that there had been planted in cotton throughout the United States a greater number of acres of land than would be shown by the report if it had been based upon the information actually obtained, and had been truly and accurately prepared (p. 240, fol. 327); and the count also charges a conspiracy that Holmes should prematurely divulge information to be contained in the report. As respects the charge of a conspiracy to cause a false report, the additional allegation of the manner in which the falseness was to be made to appear is matter of detail, and obviously unimportant in determining the character of the conspiracy alleged.

In the second count of the New York indictment it is alleged that the same parties conspired to commit the

offense against the United States of promising Holmes a sum of money to induce him to cause and procure the report mentioned to be untrue and inaccurate by causing the same to state that there had been planted in cotton throughout the United States a greater number of acres of land, and that the condition of the cotton crop was better, than would be shown by such report if it had been based upon the information received and had been truly and accurately prepared (p. 392, 3, fols. 654, 5); and this count also contains the charge of conspiracy in respect of premature divulging to Price and Haas of information as aforesaid. The remark above made with reference to the fifth count of the indictment is equally applicable here as to the alleged conspiracy in respect of causing an untrue and inaccurate report, namely, that it is wholly unimportant that one charges the offense in general and that the other specifies the manner of inducement, namely, the promising to pay for the procurement of the false and inaccurate report.

And, strangely enough, upon close inspection, it is seen that the charges in the New York indictment, though as to conspiracy the same, are really graver in the detail than those in the Washington indictment, in this, that, whereas the Washington indictment charges only a conspiracy to induce Holmes to do the specified things, the New York indictment charges additionally the bribing of him in order to induce him to do those things; and the position of the Government thus resolves itself into the demand that the appellants be taken from New York, where they can be tried on the graver aspect of the charge, and be brought to the District of Columbia, where they must be tried on the less grave.

In addition to the plain parallel thus run between the two portions of the two sets of indictments, it is clear,

upon the most cursory reading, that each set of indictments charges all of the several defendants therein named (and Peckham is not affected by either the fifth or seventh counts, above mentioned, as he is not named in the indictment in which those counts are found) with a general conspiracy, part of which was to have Holmes divulge information in advance, and part of which was to cause him to make the June, 1905, cotton crop report inaccurate in one or both of two particulars (which conspiracy is the gist of the charge and the overt acts in pursuance of which conspiracy are laid to have been committed variously in both New York and the District of Columbia); and it is equally clear—and if there were otherwise any doubt on the subject the Attorney-General's letter is conclusive—that the defendants were deliberately and designedly indicted of and for the same offense in each of two different jurisdictions; that they were apprehended and held to bail, and actually took a step or steps in pleading against the indictments in one of the jurisdictions, namely, that of New York; and that thereafter the Government attempted to remove them from that jurisdiction to the District of Columbia, there to be tried for the identical offense alleged against them by, through, and in respect of the general conspiracy.

II.

It is precisely because the fact is thus that the Government, notwithstanding some vacillation in the matter, has from the first contended that each set of indictments is maintainable because of the familiar provisions of section 731, R. S. U. S., which are as follows:

> "When any offense against the United States is begun in one judicial *circuit* (so in the Revised Statutes, but in the original act "*district*") and completed in another, it shall be deemed to have

> been committed in either, and may be dealt with, inquired of, tried, determined, and punished in either district, in the same manner as if it had been actually and wholly committed therein."

This section, which was originally part of section 30 of the act of March 2, 1867 (14 Stat., 484), it is hardly necessary to remark, is wholly disconnected with section 1014, which had its origin in section 33 of the judiciary act of September 24, 1789 (1 Stat., 91). And the persistency of the Government in insisting that the supposed offenses set forth in the separate sets of indictments were not different, but one and the same set of offenses set forth in different jurisdictions, was emphasized by the argument of the Assistant Attorney-General at the bar that section 731, R. S. U. S., was, as the fact is, originally part of the identical section, namely, section 30 of the act of March 2, 1867, the rest of which section is now section 5440, R. S. U. S., upon which the indictments in question are founded; the argument being that the provision of present section 731 that an offense begun in one district and completed in another shall be deemed to have been committed in either, was conceived and enacted by Congress with express reference to conspiracies such as are provided for and contemplated by the present section 5440, under which, confessedly, all of the indictments under consideration were found.

It remains, therefore, first, from the substance of the indictments themselves; secondly, from the dealing by the Government with the indictments after rendered—including the action of the Attorney-General as embodied in his letter, and that of the District Attorney at New York in pursuance thereof; and, thirdly, from the contentions of counsel for the Government, both in the brief and at the bar, that, from first to last, the Government has treated the cases under consideration

as one and the same case, undertaken to be prosecuted, by virtue of the provisions of section 731, R. S. U. S., in either one of the two jurisdictions in which it was possible to prosecute it, and that, notwithstanding the length to which the matter had gone in the New York jurisdiction, the Government is now seeking, for its frankly avowed purposes of convenience, to bring the appellants, nilly willy, to trial in the District of Columbia.

It is pertinent to recall the familiar provisions of section 1014, R. S. U. S., as follows:

> "For any crime or offense against the United States, the offender may, by any justice or judge of the United States, or by any commissioner of a circuit court to take bail, or by any chancellor, judge of a supreme or superior court, chief or first judge of common pleas, mayor of a city, justice of the peace, or other magistrate, of any State where he may be found, and agreeably to the usual mode of process against offenders in such State, and at the expense of the United States, be arrested and imprisoned, or bailed, as the case may be, for trial before such court of the United States as by law has cognizance of the offense. Copies of the process shall be returned as speedily as may be into the clerk's office of such court, together with the recognizances of the witnesses for their appearance to testify in the case. And where any offender or witness is committed in any district other than that where the offense is to be tried, it shall be the duty of the judge of the district where such offender or witness is imprisoned, seasonably to issue, and of the marshal to execute, a warrant for his removal to the district where the trial is to be had."

Too plainly for argument, this section never was intended to have application to a case in the situation of

the one at bar. Before the passage of the act of 1867, from which section 731, R. S. U. S., was taken, section 1014 was applicable exclusively—as in the nature of things it must have been—to the case of a crime against the United States, wholly completed in one place, the offender committing which was to be found in one of two places, namely, the district where the offense was committed (in which case he was to be held for trial before the court of the United States having cognizance of the offense), or a district other than that where the offense was triable (that is to say, where committed), in which case he was to be removed to the district of trial, which, by the sixth amendment, necessarily was the district where the offense was committed.

But since the adoption of section 731, or the act of 1867, from which it was taken, section 1014 has the same application to the case of an offender subject to prosecution in one of several districts, prosecuted in one and found in another; but, inasmuch as the sole object of section 1014 is to hold or remove an offender for trial to the place where triable, the removal provision of the section can have no play where the offender is at the place where triable.

To hold the contrary would be to hold that an offender, indicted in more than one district, may be moved from one to the other according to the humor or whim, not to say oppression, of the prosecuting authorities, and even moved back and forth upon a change of mind upon the part of the authorities, or in case of a mistrial in the district to which removal was first had. It surely needs no argument to convince any one that no such possibility was, however remotely, in the mind of even the most radical legislator.

It is to be observed that, as above pointed out, neither of the two points thus far considered affects the

appellant Peckham. The fifth and seventh counts of the Washington indictment relied on are in an indictment against Holmes, Haas, and Price, and the comparison of the charges of those counts is with the New York indictment against the same parties; so that, if, as was apparent on the argument, and as is here confidently contended, the Government's claim is to have the appellants removed to the District of Columbia upon the said fifth and seventh counts, the judgment in the case of the appellant Peckham must in any event be reversed.

III.

In the light of the decisions of Judges Ward and Holt, appearing in the record, and the discussion and colloquies at the hearing, it is felt to be hardly necessary to reinforce the contention that, as respects any charge in any of the indictments of defrauding the United States, or of fraud upon the United States, there is no support whatever for any such charge. If it be conceded that fraud is not to be defined in the abstract, it is yet indispensable that it must be made to appear in the concrete, and the metaphysical and strained efforts to make it appear that, in respect of any of the matters charged in any of the indictments, there was or could be fraud upon the United States, are wholly futile.

Nor are these contentions in anywise helped by the cases cited at the bar, those, namely, of Hyde *ex.* Shine; U. S. *ex.* Keitel; Crawford *ex.* U. S.; Curley *ex.* U. S., and Tyner *ex.* U. S. In the first two cases a fraud was clearly perpetrated upon the United States in respect of the manner in which portions of the public domain were parted with. In the Crawford case there was a corrupt bargain affecting the conduct of a public officer in respect of parting with moneys of the United States. In the Curley case the fraud consisted in foisting upon the

Government an unqualified public servant through the medium of a substituted civil service examination. And, in the Tyner case, the fraud consisted in permitting, in violation of official duty, the continuance of the use of the mails in aid of a fraudulent scheme or device. But no one of those cases, and none of the principles recognized therein, is, however remotely, related to the case at bar in respect of alleged fraud; and the suggestion from the bench that there might have been fraud in that the secretion by Holmes of the fact that he had been guilty of a violation of duty caused or permitted the Government to retain in office a corrupt and unworthy servant, is answered by the simple suggestion that no averment to that effect, either directly or indirectly, is to be found in any of the indictments, and no such contention has ever been made by counsel for the United States.

A similar remark applies to the counts of the indictments supposed to charge misconduct in office, although those counts were withdrawn by the Government. The rules of the Department of Agriculture, set forth in the Government's brief, not only have no application in the premises, but, also, are unmentioned and unreferred to, directly or indirectly, in any of the indictments or any count thereof.

Respectfully submitted.

NASH ROCKWOOD,
HENRY E. DAVIS,
For the Appellants.

No. 868.

In the Supreme Court of the United States

October Term, 1909.

FERDINAND A. PECKHAM, APPELLANT,

vs.

WILLIAM HENRY, UNITED STATES MARSHAL FOR THE SOUTHERN DISTRICT OF NEW YORK, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR APPELLANT.

In the Supreme Court of the United States.

OCTOBER TERM, 1909.

FREDERICK A. PECKHAM, APPELLANT,
v.
WILLIAM HENKEL, UNITED STATES MARSHAL for the Southern District of New York, et al. } No. 366.

BRIEF FOR APPELLEE.

STATEMENT OF THE CASE.

This appeal by Peckham involves indictments numbered 26086 and 26087, considered in the case of *Haas* v. *United States* (No. 367).

These removal proceedings were instituted November 30, 1908 (Rec., 195), and resulted on December 2, 1908, in a commitment to await the warrant of removal (Rec., 193).

Peckham's identity being admitted in the hearing before the commissioner (Rec., 207), the Government rested after introducing in evidence certified copies of the indictments, and of bench warrants thereon issued by the Supreme Court of the District of Columbia (Rec., 208).

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In reply, Peckham introduced substantially the same evidence that had been introduced by Haas in the removal proceedings against him, with the addition of copies of the record in the removal proceedings against him (Peckham) in the Northern District of New York, resulting in an order committing him to the marshal for that district for removal to the District of Columbia upon the indictment there found August 22, 1905 (Rec., 330 to 388). From this order Peckham had appealed to the Circuit Court of Appeals for the Second Circuit, pending which appeal the execution of the warrant of removal had been stayed (Rec., 366).

ARGUMENT.

Peckham raises but one question which is not raised by Haas. As to the other questions, the Government refers to the argument contained in the Haas brief.

Peckham urges that the present proceeding is illegal, because his appeal in the Circuit Court of Appeals has not yet been decided.

We insist that the decision of this court in *Beavers* v. *Haubert* (198 U. S., 77) disposes of this point, even though the facts in the two cases are not identical. The effort made by the Federal authorities in both the Northern and Southern Districts of New York is to remove Peckham to the District of Columbia for trial on indictments pending against him there. While the indictments

do not charge the same offenses, yet the purpose is to remove appellant to the same place for trial, and when he is once within that jurisdiction the court there can decide upon which indictment to try him.

The only possible effect of the second arrest of Peckham in the Southern District of New York would be his discharge upon the bond given in the Northern District, under the decision of this court in *Taylor* v. *Taintor* (16 Wall., 366). But the proceedings in the second removal case are entirely regular and valid.

It is respectfully submitted, therefore, that no error was committed by the Circuit Court in discharging the writ of habeas corpus, and that its judgment therein should be affirmed.

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